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FILED DEC 01 2006  
U.S. DISTRICT COURT  
OFFICE OF  
JUDGE TENA CAMPBELL  
2006 DEC -6  
DISTRICT OF UTAH  
BY: \_\_\_\_\_  
DEPUTY CLERK

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, NORTHERN DIVISION

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UNITED STATES OF AMERICA,	:	1:02CR 087 TC
Plaintiff,	:	
vs.	:	ORDER OF DISMISSAL
THOMAS J. WETTSTEIN,	:	
Defendant.	:	


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Based on motion of the United States and good cause appearing,

IT IS HEREBY ORDERED that the Petition on Supervised Release filed on April 26, 2006, in the above-entitled action is dismissed.

DATED this 5 day of December, 2006.

BY THE COURT:

  
\_\_\_\_\_  
TENA CAMPBELL  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
NORTHERN DIVISION

TOWN PARK HOTEL CORPORATION,  
Plaintiff,

vs.

PRISKOS INVESTMENTS, INC., et al.,  
Defendants.

ORDER

Case No. 1:02-CV-164 TC

On Monday, December 4, 2006, the court held a status conference in preparation for the fifteen-day trial beginning January 16, 2007. The court noted that various pre-trial motions are pending. Based on discussion during the status conference, the court **ORDERS** as follows:

1. Two four-hour hearings are scheduled for Thursday, January 4, 2007, at 9:00 a.m., and Friday, January 5, 2007, at 9:00 a.m. At the first hearing, the court will hear testimony, and argument if time allows, regarding the Daubert motions (Dkt #s 133 and 137). At the second hearing, the court will hear remaining argument, if necessary, on the Daubert motions, and will hear argument on other outstanding pre-trial motions (including Dkt #s 140 and 145).

2. All pre-trial motions (that is, motions presenting purely evidentiary issues) are due no later than December 13, 2006.

DATED this 5th day of December, 2006.

BY THE COURT:



TENA CAMPBELL  
United States District Judge

UNITED STATES DISTRICT COURT

Northern

U.S. DISTRICT COURT  
District of

Utah

UNITED STATES OF AMERICA **2006 DEC -5 JUDGMENT IN A CRIMINAL CASE**

V.

Franklin Gonzalez

DISTRICT OF UTAH

Case Number: DUTX105CR000147-002

BY: \_\_\_\_\_

DEPUTY CLERK USM Number: 13168-081

Tony Miles

Defendant's Attorney

**THE DEFENDANT:**

☒ pleaded guilty to count(s) 3 and 4 of of the Indictment.

☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §1344	Bank Fraud		3
18 U.S.C. §1028A	Aggravated Identity Theft		4
18 U.S.C. §2	Aiding and Abetting		4

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☒ Count(s) 1 and 2 of the Indictment. ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

12/4/2006

Date of Imposition of Judgment

*Dale A. Kimball*

Signature of Judge

Dale A. Kimball

U.S. District Judge

Name of Judge

Title of Judge

December 5, 2006

Date

DEFENDANT: Franklin Gonzalez  
CASE NUMBER: DUTX105CR000147-002

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

3 months as to count 3 and 24 months as to count 4, to run concurrently for a total of 27 months.

☒ The court makes the following recommendations to the Bureau of Prisons:

That the defendant be sent to the federal camp at Florence, CO to facilitate family visitation.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_.

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ before 2 p.m. on 1/10/2007.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Franklin Gonzalez  
CASE NUMBER: DUTX105CR000147-002

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :  
60 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☒ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Franklin Gonzalez  
CASE NUMBER: DUTX105CR000147-002

**SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall provide the U. S. Probation Office access to all requested financial information.
2. The defendant shall not be employed in the real estate business and shall notify any employer or prospective employer of his current conviction and supervision status if a third party risk is identified by the U. S. Probation Office.

DEFENDANT: Franklin Gonzalez  
CASE NUMBER: DUTX105CR000147-002

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 200.00	\$ 0.00	\$ 25,100.00

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Flagstar Bank	\$25,100.00	\$25,100.00	
ATTN: Noel Kahaian			
(Ref: Loan #500467602)			
5151 Corporate Drive			
Troy, MI 48098-2639			

TOTALS	\$ <u>25,100.00</u>	\$ <u>25,100.00</u>
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☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for the ☐ fine ☒ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Franklin Gonzalez  
CASE NUMBER: DUTX105CR000147-002

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 25,300.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:  
The Special Assessment Fee of \$200 is due immediately. The Restitution shall be paid in accordance with a schedule established by the Bureau of Prisons Inmate Financial Responsibility Program while incarcerated and the U. S. Probation Office following release from imprisonment.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☒ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

Leticia Ortiz, case # 1:05-CR-000147-001 DAK, \$25,100.00 to Flagstar Bank.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.



Pages 7 - 10

are the

Statement of Reasons,  
which will be docketed  
separately as a sealed  
document

FILED  
U.S. DISTRICT COURT

2006 DEC -5 P 2:19

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

DISTRICT OF UTAH

NORTHERN DIVISION

BY: \_\_\_\_\_  
DEPUTY CLERK

USA,

Plaintiff,

vs.

Russell Wagher,

Defendant.

ORDER OF REFERENCE

Civil No. 1:06-cr-27 DB

IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(B) and the rules of this Court, the above entitled case is referred to Magistrate Judge Nuffer. The magistrate judge is directed to manage the case, receive all motions, hear oral arguments, conduct evidentiary hearings as deemed appropriate, and to submit to the undersigned judge a report and recommendation for the proper resolution of dispositive matters presented.

DATED this 05 day of December, 2006.

BY THE COURT:



DEE BENSON  
United States District Judge

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**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF UTAH**

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**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**VICTOR MANUEL SANCHEZ,**

**Defendant.**

1:06-cr-00081 PGC

ORDER

Judge Paul G. Cassell

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This matter came before the Court on a Suppression Hearing on November 29, 2006. The government was represented by Richard W. Daynes. The defendant was represented by John Blair Hutchison. The Court denied the Motion to Suppress and found there was sufficient probable cause to justify the warrant. The Court found that under the Leon good faith exception the officers were entitled to rely upon the warrant.

The Court set the final plea deadline for December 15, 2006 and a Status Report and Scheduling Conference for December 15, 2006, at 1:00 pm.

The Court did orally exclude the time for the continuance due to the motions filed by the defendant and the time from October 17, 2006, under the Speedy Trial Act and now by written order excludes the time between October 17, 2006, and December 15, 2006.

The Court finds that it is in the best interests of the defendants and the public to continue this matter. The Court finds that 1) the ends of justice served by excluding such time outweigh the best interests of the public and the defendant in a speedy trial, and 2) it was necessary to continue this matter based on the motion to suppress filed by the defendant and the plea discussions pursuant to [18 U.S.C. § 3161\(h\)\(1\)\(F\)](#) & (I), and (h)(8). The parties by way of counsel did stipulate to such a continuance. The Court finds that the additional time for the briefing of motions, review of discovery, and discussion of plea options was and is necessary to the defendant and serves the ends of justice of both the public and the defendant.

DATED this 6th day of December, 2006.

A handwritten signature in black ink, appearing to read "Paul Cassell". The signature is written in a cursive, flowing style.

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PAUL G. CASSELL  
United States District Court Judge

# UNITED STATES DISTRICT COURT

Northern

District of

FILED  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

V.

Jesus Herrera-Lozano

JUDGMENT IN A CRIMINAL CASE - 6 A 11: 18

Case Number: DUTX 1:06CR000084-001

USM Number: 13965-081

DISTRICT OF UTAH

BY: DEPUTY CLERK

Carlos Garcia

Defendant's Attorney

## THE DEFENDANT:

☒ pleaded guilty to count(s) One of the Indictment

☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8 USC § 1326	Reentry of Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

12/4/2006

Date of Imposition of Judgment

*Tena Campbell*

Signature of Judge

Tena Campbell

Name of Judge

U.S. District Judge

Title of Judge

12-6-2006

Date

DEFENDANT: Jesus Herrera-Lozano  
CASE NUMBER: DUTX 1:06CR000084-001

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

30 Months

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends to the BOP that the defendant serve his sentence at an Arizona facility.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Jesus Herrera-Lozano  
CASE NUMBER: DUTX 1:06CR000084-001

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

24 Months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☒ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Jesus Herrera-Lozano  
CASE NUMBER: DUTX 1:06CR000084-001

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall not illegally reenter the United States.



DEFENDANT: Jesus Herrera-Lozano  
CASE NUMBER: DUTX 1:06CR000084-001

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ 0.00	\$ 0.00	
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☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Jesus Herrera-Lozano  
CASE NUMBER: DUTX 1:06CR000084-001

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10  
are the

Statement of Reasons,  
which will be docketed  
separately as a sealed  
document

**United States District Court  
for the District of Utah**

**Criminal Pretrial Instructions**

The prosecution has an open file policy.

Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

Counsel must have all exhibits premarked by the clerk for the district judge before trial.

If negotiations are not completed for a plea by the plea deadline, the case will be tried.

In cases assigned to Judge Cassell, counsel are directed to meet and confer about the possibility of a plea, and before the deadline report to chambers whether the matter will proceed to trial.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
NORTHERN DIVISION

MYGYM, LLC,

Plaintiff,

vs.

VINCE ENGLE,

Defendant.

VINCE ENGLE,

Counterclaimant,

vs.

MYGYM, LLC,

Counterdefendant.

VINCE ENGLE,

Third-Party Plaintiff,

vs.

WAYNE CARLSON and DALE KARREN,

Third-Party  
Defendants.

ORDER

AND

MEMORANDUM DECISION

Case No. 1:06-CV-130 TC

At the center of this trademark and contract dispute are the MyGym Fitness System (fitness equipment) and the MyGym trademark, the ideas for which originated with Vince Engle.

In 2004, Mr. Engle—along with Wayne Carlson and Dale Karren—formed MyGym LLC to further develop, market, and sell the MyGym Fitness System. But that business relationship, including a License Agreement between Mr. Engle and MyGym LLC, recently disintegrated and the parties have filed competing complaints in this court.

Mr. Engle, as registered owner of the MyGym trademark, has filed a Motion for Preliminary Injunction against MyGym LLC, Wayne Carlson, and Dale Karren, in which he seeks, among other things, an order barring their use of the MyGym trademark, related trade dress, and the MyGym fitness equipment design. Because Mr. Engle has not established irreparable harm, and because the balance of harms weighs in favor of MyGym LLC and its principals, the court finds that Mr. Engle is not entitled to injunctive relief at this time. Accordingly, Mr. Engle’s Motion for Preliminary Injunction is DENIED.

### **BACKGROUND**

In April 2004, Vince Engle (who has been involved in the health and fitness industries since 1985) conceptualized a piece of health equipment that would become known as the MyGym Fitness System. In May 2004, he started building prototypes out of wood and PVC pipe in his garage, and during the summer of 2004 he further developed the exercise equipment. He also decided to use the term “MyGym” to name and market the equipment. In September 2004, he presented his ideas and latest prototype to businessmen Wayne Carlson and Dale Karren, both of whom allegedly signed confidentiality agreements.

The three men then agreed to form a company to undertake production and marketing of the equipment. They negotiated the percentage of interest each would receive in the company, with Mr. Engle accepting less than fifty-one percent control of the company in exchange for a

smaller stake (he has a twenty-seven percent stake in the company now) and a six percent royalty calculated based on the company's gross sales. In November 2004, they formed MyGym, Inc., which was then converted to a limited liability company in December 2004.<sup>1</sup>

### **The License Agreement**

On December 1, 2004, Mr. Engle and MyGym LLC executed a License Agreement. The terms of that Agreement acknowledge Engle as the “developer and owner” of the MyGym fitness equipment system, “including, without limitation, all upgrades, future versions, and/or variations thereof,” as well as the “MyGym” name, “together with certain other trade names, logos, trademarks and service marks that are not registered or that are pending registration . . . .” (License Agreement Recitals A & B<sup>2</sup> (Def.’s Ex. E).) MyGym LLC further acknowledged that “the patents, patents pending, and Trademarks delivered to [MyGym LLC] by [Engle] or which may be acquired by [MyGym LLC] for [Engle] pursuant to the License Agreement or in furtherance of the MyGym Fitness System, are the sole and exclusive property of [Engle] . . . .” (Id. ¶ 7.3 (emphasis added).) And MyGym LLC agreed that it would not “contest the sole and exclusive rights of [Engle] to the MyGym Fitness System (patented or unpatented) and Trademarks and other information and intellectual property and items delivered or provided to [MyGym LLC], or which [MyGym LLC] develops or obtains access to under this License Agreement, nor shall [MyGym LLC] claim any interest in such property.” (Id. (emphasis

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<sup>1</sup>Eric Stilson also received a small membership interest in the new company and a portion of Engle’s royalties in exchange for producing an infomercial to market the MyGym Fitness System on television. Other individuals have since become investors in MyGym LLC.

<sup>2</sup>The License Agreement expressly incorporates the Recitals into the terms of the contract. (Def.’s Ex. E.)

added).) Further, the parties stipulated that

if [MyGym LLC] breaches this Agreement . . ., [Engle] shall have no adequate remedy at law. Therefore, [MyGym LLC] expressly consents and agrees that [Engle] may, in addition to any other available remedies, obtain an injunction and/or temporary restraining order to terminate or prevent the continuation of any existing default or violation, and to prevent the occurrence of any threatened default or violation by Licensee of this License Agreement, and that such injunction or order may be issued without the necessity of posting bond.

(Id. ¶ 13 (emphasis added).)

During negotiations concerning company formation and the License Agreement, Mr. Engle made certain representations regarding the status of the MyGym mark. Mr. Engle testified during the evidentiary hearing that he told Mr. Carlson and Mr. Karren that his brother had abandoned the name MyGym (in 2000, his brother had filed, and later abandoned, an application to register the “MyGym” mark with the United States Patent and Trademark Office for use in promoting a chain of health and fitness clubs)<sup>3</sup> and that he had permission from his brother to use the MyGym name for the newly developed equipment and proposed business venture.

Testimony from Mr. Carlson, Mr. Karren, and Mr. Engle’s former attorney David Hirschi (who drafted the License Agreement) suggests that Mr. Engle represented that he had some federally registered rights in the word “MyGym.” Moreover, in the Agreement itself, Recitals A and B provide that Engle is “developer and owner of MyGym®™ (Patent Pending) fitness equipment” and that the “MyGym Fitness equipment system has been registered with the appropriate agencies of the state of Utah and with the United States Patent and Trademark Office.”

The written recitals were not accurate because “MyGym” was not a registered trademark

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<sup>3</sup>See Pls.’ Ex. 1; Def.’s Ex. S.



at the time the License Agreement was signed, and there was no patent application pending. Indeed, Mr. Engle did not submit a patent application to the United States Patent and Trademark Office until December 10, 2004 (see Pls.’ Ex. 9), and he did not file an “intent to use” application to obtain a registered trademark until January 3, 2005. (See Pls.’ Ex. 2.)

The parties dispute whether the representations were material to formation and performance of the License Agreement.

### **Amendment to the License Agreement**

The parties amended the License Agreement on February 1, 2005, to add the condition that,

should [MyGym LLC] dissolve for any reason, and the result of that dissolution be that [Engle] regains control of all rights to the MyGym Fitness System, free and clear of the License, [Engle] agrees that any income derived through the sale or re-licensing of the MyGym Fitness System shall be paid to the original Unit holders of [MyGym LLC] (including [Engle]) on a pro-rata basis up to the amount of their original investment . . . .

(First Amendment to License Agreement ¶ 10.8 (emphasis added) (Def.’s Ex. E).) No other relevant portions of the License Agreement were modified, and the First Amendment expressly stated that, “[e]xcept as modified hereby, the terms and conditions of the Agreement remain in full force and effect between the parties as of the date of this First Amendment.” (Id.)

### **Patent Application**

As noted above, the first patent application was filed on December 10, 2004—ten days after the License Agreement was executed. Also, according to Mr. Carlson, after the License Agreement was executed, numerous alterations to the exercise device were required to make it commercially and economically feasible. The vast majority of these changes, MyGym LLC says,

were made by Mr. Carlson and financed by MyGym LLC. (See Decl. of Wayne Carlson ¶ 2; Pls.’ Mem. Opp’n to Mot. for Prelim. Inj. at 12.) According to Mr. Engle, he, with the assistance of MyGym LLC employees (principally Mr. Carlson), continued to develop and redefine his concept, with the core concept remaining the same. (Second Decl. of Vince K. Engle ¶ 18.) And he allowed the modification in reliance on Paragraph 7.3 of the License Agreement providing that anything developed by MyGym LLC would remain his intellectual property. (Id.)

On December 2, 2005, MyGym LLC’s and Mr. Engle’s attorney at Kirton & McConkie filed another patent application naming Mr. Engle as the sole inventor. But on July 31, 2006, Kirton & McConkie informed Mr. Engle that, based on information provided by Mr. Carlson, it had just filed an amendment to the patent application to list Wayne Carlson as an inventor. The July 31, 2006 letter questioned Mr. Engle’s claim of exclusive ownership of the intellectual property rights. (Def.’s Ex. O.) Mr. Engle contends that this act is a violation of MyGym LLC’s obligation under the License Agreement to refrain from challenging Mr. Engle’s rights to the MyGym fitness equipment.

### **Trademark Application and Registration**

On May 9, 2005, Mr. Engle submitted another “intent to use” trademark application. (See Def.’s Ex. T.) Although the trademark application was submitted in Mr. Engle’s name, it was filed with the knowledge and cooperation of MyGym LLC and its principals, Mr. Carlson and Mr. Karren, all of whom retained the law firm Kirton & McConkie to obtain the registered trademark in Mr. Engle’s name. Furthermore, the use of the mark in commerce, a necessary prerequisite, appears to have been accomplished through Mr. Engle’s related company or licensee, MyGym LLC. The United States Patent and Trademark Office issued a registered

trademark to Mr. Engle on October 10, 2006. (See id.; Def.'s Ex. H.)

### **Initial Marketing and Distribution**

MyGym LLC began marketing and selling the equipment in March 2005. The company's efforts included (a) the production and nationwide placement of print advertising; (b) the production, testing and placement of the infomercial developed by Eric Stilson; (c) and work by Mr. Engle and other MyGym LLC principals and employees at trade shows and expositions.

### **Trademark Infringement Claim by California Company**

On June 13, 2005, Mr. Engle received a letter from an attorney representing an entity called Gym Consulting, Inc. which had federally registered rights in the trademark "My Gym." The letter asked Mr. Engle to cease all use of the MyGym mark and the domain name [www.mygym.net](http://www.mygym.net). The company also threatened to file opposition proceedings in the Trademark Office against the pending "MyGym" trademark applications. (See Pls.' Ex. 7.)

After settlement negotiations between Gym Consulting on the one hand and MyGym LLC and Mr. Engle on the other hand, the parties entered into a Settlement Agreement, dated March 1, 2006. As a result of the Settlement Agreement, MyGym LLC and Mr. Engle are required to limit their use of the MyGym mark (for example, they may not market clothing using the MyGym mark), they must pay money to Gym Consulting, and MyGym LLC must change its name. (See Pls.' Ex. 14.) MyGym LLC and Mr. Engle, both of whom were parties to the Settlement Agreement, are still negotiating how they will divide up their financial obligations to Gym Consulting.

### **Bay Street Brands LLC as Exclusive Distributor**

On January 12, 2006, MyGym LLC entered into an exclusive Distribution Agreement

with Bay Street Brands LLC. (Def.'s Ex. J.) The Distribution Agreement grants Bay Street the exclusive right to sell and distribute MyGym products in the United States. In order to retain its sole distribution rights, Bay Street must sell 80,000 MyGym units in the first twelve months of the Distribution Agreement and 240,000 units in the second year of the Agreement. To date, Bay Street has sold approximately 15,000 units.

MyGym LLC is to receive "commissions" and "royalties" from these sales. Although it is entitled to keep the "commissions" as revenue, under ¶ 7.1 of the Distribution Agreement the "royalties" (separately defined and calculated as 6% of Gross Revenues) were to be paid to MyGym LLC "to permit MyGym to fulfill its contractual obligations to pay royalties to the original inventors or developers of the Products and producer of the infomercial." That is, apparently MyGym LLC was to pass the "royalties" along to Mr. Engle to satisfy its initial obligations under the License Agreement.

According to Bay Street representative Denise Kovac (who testified at the evidentiary hearing), Bay Street is confused as to who (between Mr. Engle and MyGym LLC) owns the rights to the MyGym mark and fitness equipment. She testified that Bay Street, at the request of its shareholders, has stopped marketing and selling MyGym products so as to avoid being pulled into the legal dispute. She further testified that the legal dispute between Mr. Engle and MyGym LLC has interfered with Bay Street's ability to obtain necessary financing and re-negotiate the Distribution Agreement, which Bay Street believes is contrary to the realities of the marketplace. Finally, she testified that she would not be able to calculate lost business opportunities if Bay Street is not able to continue marketing the MyGym fitness system.

### **Non-Payment of Royalties and Termination of the License Agreement**

During the time the parties were applying for various intellectual property protections, dealing with Gym Consulting's trademark infringement claim, and establishing an exclusive distribution agreement with Bay Street, a dispute about payment of royalties arose.

Under the License Agreement, Mr. Engle was to receive his first royalty payment on May 1, 2005, and his second on July 1, 2005. But these payments were not made. On August 11, 2005, Mr. Engle sent MyGym LLC a Notice of Default and Demand for Payment, as required by Paragraph 10.3(b) of the License Agreement. (Second Decl. of Vince Engle ¶ 26.) MyGym LLC did not pay because it did not have the ability to pay.

On August 23, 2005, Mr. Engle resigned as a manager of MyGym LLC. But he agreed to forebear payment of royalties due him under the License Agreement either until Mr. Carlson or Mr. Karren began to receive money from the company, or by June 1, 2006, whichever occurred first. Apparently, the provision in the Bay Street Distribution Agreement regarding payment of "royalties" was a vehicle created by Mr. Engle and MyGym LLC to assure payment of the past-due royalties.<sup>4</sup>

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<sup>4</sup>Nothing in the record reflects a complaint about the purported lack of value of the intellectual property Mr. Engle brought to the License Agreement. Indeed, the record contains two unsigned documents apparently drafted in 2005 that suggest the parties were attempting to re-negotiate their License Agreement in light of market realities, not in light of the value of the property licensed in December 2004. Those two documents are the unsigned Memorandum of Understanding (Def.'s Ex. W) and the unsigned Amended and Restated License Agreement (Def.'s Ex. U).

The Amended and Restated License Agreement (albeit unsigned) retains the language in Recitals A and B that MyGym LLC now claims was a material misrepresentation. It also contains language that the amended agreement supercedes the December 1, 2004 License Agreement and relates back to the December 1, 2004 date. "All acts of the parties with respect to this Agreement between December 1, 2004, and the date set forth above are hereby acknowledged, agreed to, ratified, and confirmed." (Def.'s Ex. U at 2.) It acknowledges that

On July 26, 2006, in light of MyGym’s failure to pay royalties, Mr. Engle again gave written notice of default as required under the License Agreement. In his notice letter, Mr. Engle told MyGym LLC that

[t]he continual lack of communication, no reporting, no payments and a disregard for the value which I have contributed [as] represented by the License Agreement has now moved me to a position to look at changing the status of the asset where the asset is more liquid and I have control over that liquidity. . . . I contacted Mark Baker [at Bay Street] and have expressed my interest in selling the patents and rights associated. This letter will also serve as my notice to you that I intend to sell the patents and rights. If Mark [Baker] is not interested or if we can’t find a reasonable value then I will start searching for an appropriate qualified buyer. . . . Again, please do not interpret this letter as my lack of appreciation of what you are doing and have done, but as a resolve to get the past current and to move forward slowly. I have demands in my life now that insist that I consider selling the patents, this is from outside obligations that I am pressured to resolve and that I have held off as long as possible.

(Def.’s Ex. M (emphasis added).) On October 5, 2006, Mr. Engle terminated the License Agreement according to the requirements in ¶ 10.3 (“Termination Upon Notice”) of the License Agreement.

### **The Lawsuit and Request for Preliminary Injunctive Relief**

Immediately after Mr. Engle submitted his termination notice, MyGym LLC filed the current lawsuit against Mr. Engle and told him in an October 11, 2006 letter that he was in breach of the License Agreement and could not unilaterally change his alleged oral agreement to

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“Trademarks” (defined in the Agreement) are “pending.” (*Id.* at ¶ 9(a).)

In the unsigned Memorandum of Understanding, the language provides that “MyGym and Engle recognize and acknowledge that the License Agreement as drafted and executed by the parties did not take into account certain realities of commencing the marketing of the MyGym Fitness system and other aspects of the business relationship created by the License Agreement and Engle’s investment in MyGym, LLC.” (Unsigned 2005 Memorandum of Understanding between Engle and MyGym (Def.’s Ex. W), Recital B.) The record does not clarify what the parties meant by “other aspects of the business relationship” and “Engle’s investment in MyGym, LLC.”

further defer payment of royalties. (Def.'s Ex. Q.) MyGym LLC's Complaint asserts causes of action for unfair competition, deceptive trade practices, breach of contract, breach of fiduciary duty, and interference with contractual and expected business relationships.

On October 30, 2006, Mr. Engle filed counterclaims, third-party claims and his Motion for Preliminary Injunction. He asserts causes of action for breach of the License Agreement, breach of confidentiality agreements, trademark and trade dress infringement, unfair competition, and tortious interference with prospective business relations. He asks the court to enjoin MyGym LLC, Mr. Carlson and Mr. Karren from:

- (1) infringing upon, marketing, disseminating, and/or selling the MyGym Fitness System, the MyGym tradename and mark, related trade dress and any other trade secrets and confidential information or materials associated therewith;
- (2) withholding from or failing to return to Engle any and all MyGym related materials and equipment in its possession;
- (3) withholding from or failing to account for and pay to Engle royalties owing for past use of the MyGym Fitness System and Trademarks;
- (4) competing with Engle in violation of the Covenant Not to Compete described in ¶ 11 of the License Agreement executed by and between Engle and MyGym; and
- (5) disseminating or otherwise revealing confidential information in violation of the Confidentiality Agreements executed by and between Engle and Carlson and Karren and the confidentiality clause found at ¶ 7.2 of the License Agreement.

(Engle's Mem. Supp. Mot. Prelim. Inj. at 2.)

### **ANALYSIS**

"A preliminary injunction is an extraordinary remedy; it is the exception rather than the rule." GTE Corp. v. Williams, 731 F.2d 676, 678 (10th Cir. 1984). The burden is "especially heavy" when "the relief sought would in effect grant plaintiff a substantial part of the relief it

would obtain after a trial on the merits.” Id. at 679.

To obtain preliminary injunctive relief, Mr. Engle must establish that (1) there is a substantial likelihood of success on the merits of his claims; (2) he will suffer irreparable injury unless the court issues the injunction; (3) the threatened injury to Mr. Engle outweighs damage the proposed injunction would cause MyGym LLC, Mr. Carlson, and Mr. Karren; and (4) the injunction, if issued, would not be adverse to the public interest. Schrier v. University of Colo., 427 F.3d 1253, 1258 (10th Cir. 2005); see also 15 U.S.C. § 1116(a) (providing district courts with jurisdiction and authority to grant injunctions “according to the principles of equity and upon such terms as the court may deem reasonable, to prevent violation of the right of the registrant of a mark” under 15 U.S.C. § 1125(a)) (emphasis added). Moreover, because Mr. Engle seeks a disfavored injunction,<sup>5</sup> his motion ““must be more closely scrutinized to assure that the exigencies of the case support the granting of a remedy that is extraordinary even in the normal course.”” Id. at 1259 (quoting O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft, 389 F.3d 973, 975 (10th Cir. 2004) (en banc)). Mr. Engle must “make a strong showing both with regard to the likelihood of success on the merits and with regard to the balance of harms, and may not rely on [the Tenth Circuit’s] modified likelihood-of-success-on-the-merits standard.” O Centro, 389 F.3d at 976.

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<sup>5</sup>The Tenth Circuit has identified three historically disfavored preliminary injunctions: (1) those that alter the status quo; (2) mandatory preliminary injunctions; and (3) preliminary injunctions that give the movant all relief it could obtain after a trial on the merits. O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft, 389 F.3d 973, 975 (10th Cir. 2004) (en banc). Mr. Engle seeks a mandatory preliminary injunction, which is the type of injunction that ““affirmatively require[s] the nonmovant to act in a particular way, and as a result . . . place[s] the issuing court in a position where it may have to provide ongoing supervision to assure the nonmovant is abiding by the injunction.”” Schrier, 427 F.3d at 1261 (quoting SCFC ILC, Inc. v. Visa USA, Inc., 936 F.2d 1096, 1099 (10th Cir. 1991)).



Although Mr. Engle alleges numerous causes of action in his counterclaim and third-party complaint, he seeks preliminary injunctive relief only on his claim for breach of the License Agreement and his claims for trademark infringement and unfair competition.

**1. Likelihood of Success on the Merits**

a. Breach of the License Agreement

Principally, Mr. Engle contends that MyGym LLC has breached the License Agreement by failing to pay him royalties and by contesting Mr. Engle's ownership of intellectual property rights to the MyGym trademark, trade dress, and fitness equipment.<sup>6</sup> Mr. Engle also points to Paragraph 13 of the License Agreement, in which MyGym LLC acknowledged that a breach would leave Mr. Engle with "no remedy at law" and that Mr. Engle is entitled to injunctive relief.

MyGym LLC counters that Mr. Engle materially breached the License Agreement when it was executed, because, contrary to his representations, he did not have rights to the "MyGym" mark or rights in a pending patent application on the effective date of the License Agreement. Consequently, according to MyGym LLC, Mr. Engle does not have the right to enforce against an alleged subsequent breach by MyGym LLC.

"The law is well settled that a material breach by one party to a contract excuses further performance by the nonbreaching party. Also, a party seeking to enforce a contract must prove performance of its own obligations under the contract." Eggett v. Wasatch Energy Corp., 94 P.3d 193, 199 (Utah 2004) (quoting Holbrook v. Master Prot. Corp., 883 P.2d 295, 301 (Utah Ct.

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<sup>6</sup>Mr. Engle also contends that Mr. Carlson and Mr. Karren have breached Confidentiality Agreements. Assuming such agreements were properly executed (for example, Mr. Carlson disputes even signing such an agreement), the record contains no evidence that any confidential information has been disclosed. Accordingly, the court does not find Mr. Engle's claims of breach of the confidentiality agreements persuasive and it will not consider them in the analysis.

App. 1994)). See also Aquagen Int'l, Inc. v. Calrae Trust, 972 P.2d 411, 414 (Utah 1998)

(“performance cannot be compelled when the non-failing party to a contract fails to receive that which has been bargained for”). The question of whether a breach is material is one of fact.

Coalville City v. Lundgren, 930 P.2d 1206, 1209 (Utah Ct. App. 1997).

There is no question that, at the time the License Agreement was executed, Mr. Engle did not own the rights described in the License Agreement and so he misrepresented the value of what he brought to the bargaining table. But it appears that none of the parties truly understood the legal implications of the terms, and, further, Mr. Carlson and Mr. Karren did expect that some future applications would be necessary. Indeed, Mr. Carlson’s and Mr. Karren’s expectations are demonstrated by the parties’ actions (and inactions) after the License Agreement was executed.

First, when the parties to the License Agreement amended it on February 1, 2005, they did not change any of the recitals containing the misrepresentations which they now claim to be material. In fact, they specifically re-iterated the un-amended portions of the License Agreement, including Recitals A and B (which contained the misrepresentations).

Second, when Mr. Engle sent his May 2005 “intent to use” trademark registration application to the United States Patent and Trademark Office, he did so with the full knowledge and cooperation of MyGym LLC, who along with Mr. Engle retained the attorney to file the application. Moreover, that application lists Vince Engle as the owner.

Third, after MyGym LLC received notice from Gym Consulting, Inc. in June 2005 about a possible infringement lawsuit, MyGym LLC did not attempt to void the License Agreement

based on a purported lack of value of what Mr. Engle provided at the company's inception.<sup>7</sup> The same can be said about Mr. Engle's August 2005 letter demanding payment of royalties.

Fourth, the stated reason that MyGym LLC did not pay the royalties to Mr. Engle was that they did not have the money to pay. No mention was made, until litigation was on the horizon in the summer and fall of 2006, of the value of the intellectual property licensed by Mr. Engle in December 2004.

Fifth, in August 2005, Mr. Carlson wrote a letter to Mr. Engle detailing Mr. Carlson's specific concerns about his and MyGym LLC's relationship with Mr. Engle. (See Aug. 24, 2005 Letter from Wayne Carlson to Vince Engle (Def.'s Ex. V).) Nowhere in the letter does he raise an issue regarding representations made when the License Agreement was executed on December 1, 2004, much less the materiality of such representations.

For all of these reasons, the court finds, at this preliminary stage, that Mr. Engle did not materially breach the License Agreement in the manner asserted by MyGym LLC. Accordingly, he may follow through on his breach of contract claim.

It appears from the record that MyGym LLC has not satisfied its obligations to pay royalties to Mr. Engle. Further, there is no question that MyGym LLC is now contesting Mr. Engle's intellectual property rights in apparent disregard of language in ¶ 7.3 of the License Agreement. Finally, regardless of the efforts (financial or otherwise) made by other principals at MyGym LLC, the language of the License Agreement contemplates that Mr. Engle alone reaps

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<sup>7</sup>Even after the parties settled with Gym Consulting, Inc. on March 1, 2006, no inkling of MyGym LLC's claim of failure of consideration arose until July 2006, in the letter from Kirton & McConkie to Mr. Engle. (See July 31, 2006 Letter from David Tingey, Esq. of Kirton & McConkie, to MyGym LLC and its principals (Def.'s Ex. O).)

the benefit of those efforts when it comes to ownership of the MyGym intellectual property rights.

At this preliminary stage, Mr. Engle has established a likelihood of success on his claim for breach of the License Agreement.

b. Trademark Infringement and Unfair Competition

To establish likelihood of success on the merits of his trademark and unfair competition claims, Mr. Engle must establish that the mark is valid and legally protected, that he owns it, that MyGym LLC has used the trademark in commerce without his permission, and that there is likelihood of confusion as to the source of the MyGym fitness equipment. 15 U.S.C. §§ 1114, 1125(a); Universal Money Ctrs., Inc. v. AT&T Co., 22 F.3d 1527, 1529 (10th Cir. 1994).

There is no dispute that the mark is federally registered in Mr. Engle's name, and that MyGym LLC has used (or intends to use) the mark even after Mr. Engle's termination of the License Agreement. Still, even though the mark is registered (as of October 10, 2006), MyGym LLC has possible defenses under 15 U.S.C. § 1115(b). See also GTE Corp., 904 F.3d at 540 n.3 (citing 15 U.S.C. § 1065, the court stated that, with some exceptions, "a mark becomes incontestable if continuously used for five consecutive years after registration, provided it does not infringe valid rights acquired by common law usage before the date of publication of the registered mark."). It is not clear whether MyGym LLC has raised (or is going to raise) specific defenses under this statutory provision,<sup>8</sup> but certainly MyGym has raised questions about Mr. Engle's ownership of the mark under the Lanham Act. Also, certain issues arise regarding

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<sup>8</sup>MyGym LLC, Mr. Carlson, and Mr. Karren have not yet answered Mr. Engle's Counterclaim and Third-Party Complaint.

the “likelihood of confusion” element.

“The key to proving trademark infringement is showing a likelihood of confusion as to the source of the product or service.” GTE Corp. v. Williams, 731 F.2d 676, 678 (10th Cir. 1984) (citing 15 U.S.C. § 1114); see also King of the Mountain Sports, Inc. v. Chrysler Corp., 185 F.3d 1084, 1089 (10th Cir. 1999) (“Likelihood of confusion forms the gravamen for a trademark infringement action.”) (citing 15 U.S.C. §§ 1114, 1125). The same can be said for Mr. Engle’s claims of trade dress infringement and unfair competition under the Lanham Act. See id.; 15 U.S.C. §§ 1114, 1125(a) (containing requirements of likelihood of confusion). See also Amoco Oil, Co. v. Rainbow Snow, 748 F.2d 556, 558 (10th Cir. 1984) (holding that determinations of liability in trademark, trade dress, and unfair competition under Utah law are made according to standards set forth in Lanham Act).<sup>9</sup>

Mr. Engle notes that the Tenth Circuit has identified six factors, derived from the Restatement of Torts § 729, that aid in determining whether a likelihood of confusion exists (which is a question of fact). Those factors are (1) the degree of similarity between the marks; (2) the intent of the alleged infringer in adopting its mark; (3) evidence of actual confusion; (4) the relation in use and the manner in marketing between the goods or services marketed by the competing parties; (5) the degree of care likely to be exercised by purchasers; and (6) the strength or weakness of the marks. King of the Mountain, 185 F.3d at 1089-90. This list is not exhaustive, the factors are “interrelated,” and “no one factor is dispositive.” Id. But the factual situation in King of the Mountain is different, so its factor-by-factor analysis is not easily

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<sup>9</sup>If Mr. Engle’s state law claims require analysis of a different set of elements, the parties have not briefed the issue (they focus solely on federal trademark law) and so the court will not consider it here.

transferred to the MyGym case. For instance, the court in King of the Mountain was evaluating two competing marks, not the same mark. Moreover, it was assessing the response that a consumer would have at the point of advertising to the allegedly similar marks. So, rather than apply the factors individually, Mr. Engle claims likelihood of confusion in two circumstances.

First, he cites to actual confusion on the part of Bay Street. But Bay Street is not confused about the source of the product or service. Rather, Bay Street is concerned (for practical business reasons) about who is legally entitled to control the MyGym brand. Moreover, Bay Street is not a consumer of the MyGym fitness equipment in the manner contemplated by the trademark infringement law. See, e.g., Continental Plastic Containers v. Owens Brockway Plastic Products, Inc., 141 F.3d 1073, 1080-81 (Fed. Cir. 1998) (noting that, to determine likelihood of confusion, court must identify the relevant consumer base, and that inquiry centers on “confusion of consumers in the market for the particular product at issue”). Here there is no evidence that a person buying the MyGym Fitness System through direct marketing or through a retailer like Wal-Mart would be concerned with, much less confused by, the question of whether the source of the product is Vince Engle or MyGym LLC.

Second, Mr. Engle contends that use of the exact same mark in the same market is a conclusive factor in finding likelihood of confusion. See, e.g., S&R Corp. v. Jiffy Lube Int’l, Inc., 968 F.2d 371, 375 (3d Cir. 1992) (“concurrent use [of exact same trademark] is highly likely to cause consumer confusion about [the franchisee’s] affiliation with the franchise”); Burger King Corp. v. Mason, 710 F.2d 1480, 1492 (11th Cir. 1983) (“Common sense compels the conclusion that a strong risk of consumer confusion arises when a terminated franchisee continues to use the former franchisor’s trademark’s.”). But this case is different. Mr. Engle and

MyGym LLC are not competing. They are not operating businesses simultaneously. Rather, Mr. Engle wants to substitute himself for MyGym LLC in the market. Right now, there is no situation that would cause the confusion identified in the above-cited cases because there is no competition to be confused about. This case is not as simple as Mr. Engle suggests. Mr. Engle was intimately involved in the formation of MyGym LLC. He was involved in many decisions that not only created income for the company but also created financial obligations. He is not so easily separated from the entity. In other words, his relationship with MyGym LLC, Mr. Carlson, and Mr. Karren is much more involved than the cases of, for example, a franchisor and franchisee, or a straightforward licensor/licensee relationship. For these reasons, it is not clear to the court that a likelihood of consumer confusion is imminent.

Still, even if Mr. Engle were to establish a clear likelihood of success on the merits of his trademark and unfair competition claims, he cannot establish irreparable harm.

## **2. Irreparable Harm**

Harm is irreparable when it cannot be measured and is not compensable with monetary damages. Dominion Video Satellite, Inc. v. EchoStar Satellite Corporation, 356 F.3d 1263 (10th Cir. 2004) (irreparable harm determinations consider factors such as “inability to calculate damages, harm to goodwill, diminishment of competitive positions in marketplace . . . and lost opportunities to distribute unique products”). The injury must be “certain, great, actual and not theoretical.” Schrier, 427 F.3d at 1267 (internal citations omitted); see also Dominion Video, 356 F.3d at 1262 (irreparable injury “must be both certain and great, and . . . must not be merely serious or substantial”).

a. Breach of License Agreement Claim

Mr. Engle points to language in the License Agreement in which the parties stipulated that

if [MyGym LLC] breaches this Agreement . . . , [Engle] shall have no adequate remedy at law. Therefore, [MyGym LLC] expressly consents and agrees that [Engle] may, in addition to any other available remedies, obtain an injunction and/or temporary restraining order to terminate or prevent the continuation of any existing default or violation, and to prevent the occurrence of any threatened default or violation by Licensee of this License Agreement, and that such injunction or order may be issued without the necessity of posting bond.

(Id. ¶ 13 (emphasis added).) Such a provision does not settle the question of irreparable harm.

In Dominion Video Satellite, Inc. v. Echostar Satellite Corporation, 356 F.3d 1256 (10th Cir. 2004), the Tenth Circuit addressed a situation in which the agreement at issue contained a similar provision. In that case, “[t]he Agreement state[d] that should either party breach the agreement, money damages would be insufficient, the harm from the breach would be irreparable, and the non-breaching party would have the right to obtain specific performance or injunctive relief.” Id. at 1259 (summarizing language of contract). But based on the specific circumstances of the case, the Tenth Circuit found that no irreparable harm had been established.

The court noted that:

[w]hile courts have given weight to parties’ contractual statements regarding the nature of harm and attendant remedies that will arise as a result of a breach of a contract, they nonetheless characteristically hold that such statements alone are insufficient to support a finding of irreparable harm and an award of injunctive relief. . . . Instead, the courts also identify other factors which establish that the harm is indeed irreparable.

Id. at 1266 (internal citations omitted). Clearly, the parties’ stipulation in Dominion Video carried little, if any, weight in the Tenth Circuit’s analysis of whether irreparable harm existed.



In the case here, the parties' stipulation also does not carry much weight, because the economic damages can be measured (indeed, Bay Street's representative noted that sales could be easily accounted for if only Bay Street knew which of the two parties it should deal with). Any profits from sales that MyGym LLC makes can be fully accounted for, as can overdue royalty payments. As for injury caused by MyGym LLC's challenge to Mr. Engle's intellectual property rights, any purported irreparable harm is inextricably intertwined with irreparable harm under the trademark and unfair competition claims, and that issue is addressed below.

In short, on the basis of Mr. Engle's contract claim alone, the court finds that he has not established irreparable harm.

b. Trademark Infringement and Unfair Competition Claims

Typically, a finding of infringement creates a presumption of irreparable harm. E.g., GTE Corp., 731 F.2d at 678. But that presumption is not a given. "Despite the general acknowledgment that irreparable harm often arises from the breach of [exclusive licensing agreements], courts do not automatically, nor as a matter of course, reach this conclusion. Rather, they examine whether the harms alleged by the party seeking the preliminary injunction are in fact irreparable, and sometimes conclude in the negative." Dominion Video Satellite, 356 F.3d at 1260. See also Ebay Inc. v. Mercexchange, L.L.C., 126 S. Ct. 1837 (May 15, 2006) (holding that injunctions under patent law should not be automatically granted upon finding of infringement, that the presumption of injury should not result in categorical grant of relief, and that courts must exercise discretion under traditional principles of equity). Right to relief, especially in the context of a request for disfavored injunctive relief, must be "clear and unequivocal." Dominion Video Satellite, 356 F.3d at 1261 (quoting SCFC ILC, Inc. v. Visa

USA, Inc., 936 F.2d 1096, 1098 (10th Cir. 1991)). In this case, considering all of the circumstances (including the parties' business venture relationship and their pre-litigation focus on quantifiable financial injuries) and given the high standards that apply here, the court finds that Mr. Engle has not satisfied his burden to establish irreparable harm.

The court finds the case of Dialogo, LLC v. Santiago-Bauza, 425 F.3d 1 (1st Cir. 2005), to be very persuasive. In Dialogo, the First Circuit denied a motion for preliminary injunction in a trademark infringement case filed under the Lanham Act. The court described the situation as "an ill-fated business arrangement" between an entity (DMSA) and an individual (Lillian Santiago) who together formed Dialogo, LLC to publish a bilingual newspaper (El Dialogo) in Massachusetts. DMSA provided the initial capital. Ms. Santiago brought the publication (which she had been operating at a loss) to the venture. Approximately eight months after the parties formed their business venture, Ms. Santiago told DMSA that she was closing the business. But she continued to publish El Dialogo through her new entity, El Dialogo LLC. DMSA sued, alleging claims for trademark infringement, misappropriation of trade secrets, and breach of contract. DMSA also sought a preliminary injunction preventing Ms. Santiago from using the title "El Dialogo," disclosing proprietary information, and using the physical assets of Dialogo, LLC. The First Circuit found no irreparable harm, even for the trademark infringement claims:

Although there is law to the effect that irreparable injury is presumed in infringement cases where the plaintiff shows a likelihood of success [citation omitted], this case does not fit the mold. Irreparable—or at least unquantifiable—injury may be fairly likely where two business are vying for the same customers using the same trademark or two marks that can be confused with one another. There, every customer diverted to a defendant may be an undetectable loss, even a permanent one, to the plaintiff. Thus, a presumption of irreparable injury makes some sense.

This case is quite different. Here, from DMSA's own version of the events, Santiago is conducting the Dialogo, LLC business under her new company's name and DMSA is publishing no similar newspaper. DMSA does not claim that Santiago is running the business into the ground; the question is whether a share of profits (if any), and ultimately the business itself, should be restored to Dialogo, LLC. The kind of irreparable injury that ordinarily underpins the presumption is not present here; for all we can tell, everyone will be better off with a continuation of the business by Santiago for the time being and a swift trial.

Dialogo, LLC v. Santiago-Bauza, 425 F.3d 1, 4 (1st Cir. 2005). See also Kitty Walk Sys., Inc. v. Midnight Pass Inc., 431 F. Supp. 2d 306, 309 (E.D.N.Y. 2006) (noting that district court denied preliminary injunctive relief to owners of trademark and patent rights who sued business partner after business venture deteriorated, because defendants distributed authentic products about which there was no confusion).

The case here also “does not fit the mold” of a typical trademark infringement or licensing dispute. Mr. Engle relies on the presumption of irreparable harm,<sup>10</sup> but the presumption is not properly invoked here for essentially the same reasons articulated in Dialogo. And he has no evidence to back up his conclusory statements that he will suffer the loss of goodwill, injury to his reputation, loss of trade, and dilution of the MyGym mark. For these reasons, the court finds that Mr. Engle has not established that he will suffer irreparable injury if an injunction is not granted.

### **3. Balance of the Harms and Public Interest**

Regardless of how the court rules, both parties will suffer harm. Granting an injunction would prevent MyGym LLC from using its only valuable assets. It is possible that MyGym LLC

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<sup>10</sup>Mr. Engle also relies heavily on the unreported case of Tsunami Softgoods, Inc. v. Tsunami Int'l, Inc., Case No. 2:00CV738K (D. Utah Jan. 19, 2001), to support his position. Tsunami is distinguishable because there the court was not faced with the complications of estranged business venture partners and a contestable trademark.

would go out of business in the interim (its only source of income would be denied), and a substantial amount of money (and labor) would be lost by investors. Moreover, Bay Street (MyGym LLC's exclusive distributor) will remain in limbo. On the other hand, denying an injunction will prevent the registered owner of the trademark from controlling his intellectual property in the interim and will delay direct financial benefit from the sale of that property until after a decision on the merits has been issued (assuming he succeeds on his claims).

The public has an interest in preventing both types of harms. So the "public interest" factor does not weight in favor of either side.

But the balance of harms weighs in favor of MyGym LLC. There is evidence in the record that MyGym LLC and its principals, including not only Mr. Engle but Mr. Carlson and Mr. Karren, provided much labor and capital to develop value in MyGym LLC, particularly the MyGym mark, related trade dress, and potential patent rights. MyGym LLC's sole purpose is to further develop, market, and sell the MyGym products. If Mr. Engle obtains the injunctive relief he requests, he will essentially be getting everything he requests in his complaint but without a full trial on the merits. And MyGym LLC (and Mr. Carlson and Mr. Karren) will be left with little, if anything (the court does not agree that this is a case of self-inflicted harm, as was alleged in Tsunami). This is particularly problematic because MyGym LLC has not had a full opportunity to present its defenses to Mr. Engle's trademark infringement and unfair competition claims. For these reasons, the court finds that Mr. Engle has not established that the balance of harms weighs in favor of granting injunctive relief.

### **CONCLUSION**

Mr. Engle has failed to meet the heavy burden applicable to preliminary injunctive relief.

While Mr. Engle may ultimately prevail on some, or perhaps even all, of his claims, he has not established irreparable harm. Further, consideration of the balance of the parties' potential harms supports the conclusion that a preliminary injunction is inappropriate in this case.

**ORDER**

For the foregoing reasons, Mr. Engle's Motion for Preliminary Injunction is DENIED, and Mr. Engle's Motion to Strike Portions of Declaration of Dale Karren is DENIED AS MOOT.

DATED this 6th day of December, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL  
United States District Judge

# UNITED STATES DISTRICT COURT

District of \_\_\_\_\_

FILED  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

V.

Stacie Bateman

## AMENDED JUDGMENT IN A CRIMINAL CASE

2006 DEC -5 P 2:20

Case Number: DUTX 2:01-cr-000038-005

USM Number: 08607-081

DISTRICT OF UTAH

James N. Barber

BY:

Defendant's Attorney

DEPUTY CLERK

Date of Original Judgment: 11/20/2006

(Or Date of Last Amended Judgment)

### Reason for Amendment:

- ☐ Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))  
☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))  
☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))  
☐ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

- ☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))  
☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))  
☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))  
☐ Direct Motion to District Court Pursuant ☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)  
☐ Modification of Restitution Order (18 U.S.C. § 3664)

### THE DEFENDANT:

☒ pleaded guilty to count(s) Is - Indictment

☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18USC§371	Conspiracy to Defraud the United States		Is

The defendant is sentenced as provided in pages 2 through 11 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

11/20/2006

Date of Imposition of Judgment

*Dee Benson*

Signature of Judge

Dee Benson

U.S. District Judge

Name of Judge

Title of Judge

12/5/2006

Date

DEFENDANT: Stacie Bateman  
CASE NUMBER: DUTX 2:01-cr-000038-005

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of \_\_\_\_\_

☐ The court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_ with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Stacie Bateman  
CASE NUMBER: DUTX 2:01-cr-000038-005

## PROBATION

The defendant is hereby sentenced to probation for a term of:

24 months.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of probation that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court as well as with the additional conditions on the attached page.

## STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record, personal history, or characteristics and shall permit the probation officer to make such notifications and confirm the defendant's compliance with such notification requirement.



DEFENDANT: Stacie Bateman

CASE NUMBER: DUTX 2:01-cr-000038-005

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall submit to electronic monitoring for a period of 60 days and shall stay at her place of residence except for travel from Idaho to Mesa, Arizona from December 20, 2006 to January 1, 2007, employment and other activities that are approved in advance by the probation officer. The defendant shall maintain a telephone at her place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall comply with all of the terms and conditions set forth in the Home Confinement Program Participant Agreement as provided by the probation office. The costs will be paid by the defendant in monthly payments as arranged by the probation officer.
2. The defendant shall provide the probation office access to all requested financial information.
3. The defendant shall abide by the following occupational restrictions: The defendant is prohibited from participating in any manner in the affairs of any federally regulated financial institution. The defendant shall not have direct or indirect control over the assets or funds of others. The defendant shall be prohibited from participating in the solicitation of investment funds or the promotion of securities or other investment tools.

DEFENDANT: Stacie Bateman

CASE NUMBER: DUTX 2:01-cr-000038-005

### CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 100.00	\$ 5,000.00	\$

☐ The determination of restitution is deferred until \_\_\_\_\_. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

**TOTALS** \$ \_\_\_\_\_ \$ \_\_\_\_\_

☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for ☐ fine ☐ restitution.

☐ the interest requirement for ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Stacie Bateman  
CASE NUMBER: DUTX 2:01-cr-000038-005

Judgment — Page 6 of 11

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or
- ☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

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IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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JONES WALDO HOLBROOK &  
McDONOUGH, a Utah professional law  
corporation,

Plaintiff,

vs.

DAVID G. CADE et al.,

Defendants.

ORDER DENYING MOTION TO  
ENFORCE COURT’S FINAL  
JUDGMENT

Case No. 2:01-cv-00933

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David Cade has requested this court to clarify the scope of its prior order disposing of this case — or, as he puts it, to “enforce this court’s final judgment.” But the standards Mr. Cade asks the court to enforce appear nowhere in the judgment the court entered. Mr. Cade claims the court’s prior order barred any and all collection activity against him by the IRS for certain tax years. The issue before the court in this case, and the court’s order, was much more limited — it resolved only various claimants’ priority to disbursements of certain funds deposited with the court.

## **BACKGROUND**

In the underlying case, Plaintiff Jones Waldo Holbrook & McDonough brought suit seeking monetary damages, the foreclosure of an attorney lien against Mr. Cade, and declaratory relief. In its Amended Complaint, Jones Waldo named the United States as a defendant because of the United States' liens and levies against Mr. Cade. In July 2001, to avoid becoming involved in conflicting claims to the funds, Zions Bank deposited \$1,750,000 in settlement funds with the Third District Court in Utah. In July 2002, the IRS removed the issue of the proper disposition of this money to this court.

The United States filed an Answer and Claim on April 17, 2002. In it, the United States made a claim against the \$1,750,000 deposited in the registry of the court. The United States alleged federal tax liens had attached to the funds, based on unpaid individual income taxes, plus statutory penalties and interest accruing against Mr. Cade, for the years 1990, 1991, 1992, 1993, 1995, 1996, 1997, 1998, and 1999.

On December 20, 2002, the United States filed a motion for summary judgment against Mr. Cade for all tax years contained in its claim — as of February 2003, Mr. Cade's total tax assessments were \$791,867.97. On March 24, 2003, the court issued an order which, among other things, distributed \$575,000 to the United States. On April 15, 2003, the court issued its memorandum decision. After receiving no objections to this decision, on April 29, 2003, the Court closed the case. Mr. Cade appealed this court's decision to the Tenth Circuit. On June 9, 2004, the Tenth Circuit issued a mandate, affirming the judgment of this court.

The IRS has continued to undertake collection efforts against Mr. Cade for tax years 1996, 1997, 1998, and 1999, as well as for more recent tax years. Mr. Cade objects to these

collection activities, claiming the court's order completely resolved and settled all of the IRS's claims against Mr. Cade for the tax years of 1991, 1992, 1993, 1995, 1996, 1997, 1998, and 1999. Mr. Cade also claims the doctrine of *res judicata* prohibits these collection activities against him.

## **DISCUSSION**

Mr. Cade reads too much into the court's prior decisions in this case and, in doing so, ignores the limited nature of the court's rulings. In effect, Mr. Cade requests this court to extend the effect of its rulings to cover issues the court never reached. In this case, the court merely resolved the claims regarding the priority and disbursement of the settlement funds deposited in the registry of the court — the decision reached no further.

The record reveals this limited nature of the issues before the court and the limited reach of the court's decision. For instance, the government framed its claim as an entitlement to "the funds in the registry of this Court in the amount of \$702,823.49."<sup>1</sup> The United States did not seek to adjudicate the underlying tax assessments against Mr. Cade or to obtain judgment against him. And the court's order is limited to the claims before it. The court started its opinion of March 15, 2003, with a statement of the limited issues it reviewed: "This matter is currently before the court on eight different motions related to the disbursement of a settlement fund between Mr. David Cade, and Zion's Bank."<sup>2</sup> The court's only role was to determine the priorities of various claimants to the funds — it never addressed any claims by the United States against Mr. Cade personally.

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<sup>1</sup> Docket No. 38, Answer and Claim 6.

<sup>2</sup> Docket No. 94, Opinion 1.

Mr. Cade relies on two lines in the court's opinion to support his argument that the case completely resolved the government's claims against him. First, Mr. Cade argues that the statement, "this disbursement completely resolves the parties['] claims against Mr. Cade *for the relevant claims discussed here*,"<sup>3</sup> supports his argument that the IRS is barred from further collection activity regarding the tax years at issue. But Mr. Cade seems to have missed the highlighted language and, in doing so, has misconstrued the nature of the judgment. The only relevant claims the court discussed were those regarding the priority in distribution to the deposited funds. Only those issues, therefore, were resolved. The court never addressed any personal claims the IRS may have against Mr. Cade for those tax years, and never addressed Mr. Cade's remaining tax debt or the IRS's ability to collect on it.

Second, Mr. Cade argues that the statement, "[r]egarding the IRS, its claims too were properly assessed, and they agreed to a large reduction [of] Mr. Cade's outstanding debt,"<sup>4</sup> means the IRS agreed to dismiss all of Mr. Cade's outstanding tax liabilities. Considering that settlement of Mr. Cade's personal, total, tax liabilities was never argued before the court, Mr. Cade's reading is entirely implausible. This \$575,000 disbursement certainly represented a large reduction of Mr. Cade's outstanding tax debt. And this statement means only that IRS agreed to receive \$575,000, as its portion of the \$1,750,000 at issue, rather than the \$702,823.49 it sought. It is not the same as saying the IRS is forever barred from attempting to collect against Mr. Cade for the other debts he owed to the IRS for the tax years in question. Even Mr. Cade understood this to be the case. He recognized, in affidavit testimony, "[e]ven though the IRS is taking a

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<sup>3</sup> *Id.* at 18 (emphasis added).

<sup>4</sup> *Id.* at 15.



lesser amount than its claim, the unpaid amount of this asserted claim will still be a valid assessment against Cade.”<sup>5</sup>

The court does not decide the preclusive effect of its decision because the current procedural posture of this case does not fit the preclusion doctrine. Under the doctrine of claim preclusion (or *res judicata*), a final judgment on the merits of an action precludes the parties from re-litigating issues that were, or could have been, raised in the prior action.<sup>6</sup> In federal litigation, the first court that hears the case does not decide the preclusive effect of its own judgments.<sup>7</sup> Instead, subsequent courts decide what matters were settled by the first case.<sup>8</sup> Following this established federal practice, the court will not decide the preclusive effect of its judgment, but will defer this determination to a judge in a later action.

The court also does not evaluate the government’s claim of sovereign immunity, since this order merely clarifies the scope of the proceeding.

### CONCLUSION

The court will not accede to Mr. Cade’s request to expand the reach of this court’s prior decision. As the March 15, 2003, decision of this court was limited to the priority and disbursement of funds deposited in the registry of the court from the settlement between Mr.

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<sup>5</sup> Docket No. 80, Aff. of David Cade 5–6.

<sup>6</sup> *Satsky v. Paramount Comm’cs, Inc.*, 7 F.3d 1464, 1467 (10th Cir. 1993).

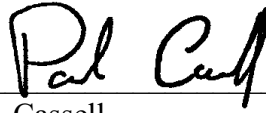
<sup>7</sup> *See Teamsters Local 282 Pension Trust Fund v. Angelos*, 762 F.2d 522, 525 (7th Cir.1985).

<sup>8</sup> *Id.*

Cade and Zions Bank, the court DENIES Mr. Cade's motion [#121].

DATED this 6th day of December, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell", written over a horizontal line.

Paul G. Cassell  
United States District Judge

FILED  
U.S. DISTRICT COURT

2006 DEC -6 A 11: 18

DISTRICT OF UTAH

BY: DEPUTY CLERK

DAVID K. BROADBENT, 0442  
HOLLAND & HART LLP  
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Salt Lake City, Utah 84111-1031  
(801) 799-5800

Attorneys for David K. Broadbent, Receiver for Merrill Scott & Associates, Ltd.,  
Merrill Scott & Associates, Inc., Phoenix Overseas Advisors, Ltd., Gibraltar  
Permanente Assurance, Ltd., and each of their respective Subsidiaries and Affiliated  
Entities

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff and Intervention Defendant,  
v.

MERRILL SCOTT & ASSOCIATES, LTD.;  
MERRILL SCOTT & ASSOCIATES, INC.;  
PHOENIX OVERSEAS ADVISORS, LTD.;  
GIBRALTAR PERMANENTE ASSURANCE,  
LTD.; PATRICK M. BRODY; DAVID E. ROSS  
II and MICHAEL G. LICOPANTIS,

Defendants.

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DAVID K. BROADBENT, ESQ., as RECEIVER  
for MERRILL SCOTT & ASSOCIATES, LTD.;  
MERRILL SCOTT & ASSOCIATES, INC.;  
PHOENIX OVERSEAS ADVISORS, LTD.;  
GIBRALTAR PERMANENTE ASSURANCE,  
LTD.; and each of their respective  
SUBSIDIARIES and AFFILIATED ENTITIES,

Third-Party Plaintiff,  
v.

CERTAIN UNDERWRITERS AT LLOYDS,  
LONDON; and JAMES P. LANDIS,

Third-Party Defendants.

ORDER CONFIRMING AND  
APPROVING SETTLEMENT  
AGREEMENT WITH LARRY E. AND  
KELLI B. COTTEN, AND THE  
LARRY AND KELLI COTTEN  
CHARITABLE SUPPORTING  
ORGANIZATION

Civil No. 2:02CV-0039C

Judge Tena Campbell  
Magistrate Judge David Nuffer

Based upon the filings of the Receiver, David K. Broadbent, and being otherwise informed, the Court HEREBY ORDERS:

1. That the Settlement Agreement and Mutual Release of All Claims, dated November 28, 2006, and entered into by David K. Broadbent as Receiver, and Larry E. and Kelli B. Cotten, and The Larry And Kelli Cotten Charitable Supporting Organization, is approved and confirmed by this Court.

DATED this 5 day of December, 2006.

BY THE COURT:

  
\_\_\_\_\_  
Judge Tena Campbell

United States District Court  
for the District of Utah

RECEIVED

Request and Order to Amend Previous Petition

DEC 04 2006

Name of Offender: **Charles Weston Robison**

Docket Number: **2:03-cr-00260-001-TC**

Name of Sentencing Judicial Officer: **Honorable Tena Campbell**  
**United States District Judge**

JUDGE TENA CAMPBELL

Date of Original Sentence: **October 29, 2003**

Original Offense: **Possession of a Firearm With an Obliterated Serial Number**

Original Sentence: **21 Months BOP Custody/36 Months Supervised Release**

Type of Supervision: **Supervised Release**

Supervision Began: **October 21, 2004**

Supervision Revoked: **December 16, 2004**

Supervision Began: **May 2, 2006**

PETITIONING THE COURT

[ X ] To amend the petition signed on November 22, 2006 as follows:

CAUSE

*Allegations on November 22, 2006 petition:*

**Allegation No. 1:** On August 15, 2006, the defendant submitted a urine sample that tested positive for methamphetamine.

**Allegation No. 2:** On September 14, 2006, the defendant submitted a urine sample that tested positive for methamphetamine.

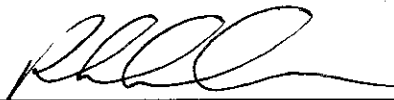
**Allegation No. 3:** On October 20, 2006, the defendant submitted a urine sample that tested positive for methamphetamine.

*Additional allegations:*

**Allegation No. 4:** On November 21, 2006, the defendant failed to attend an individual substance abuse counseling session at The Gathering Place.

**Allegation No. 5:** The defendant failed to submit to drug testing as directed by the United States Probation Office on November 13, 2006, November 20, 2006, and November 28, 2006.

I declare under penalty of perjury that the foregoing is true and correct



Richard G. Law, U.S. Probation Officer

Date: December 4, 2006

FILED  
U.S. DISTRICT COURT  
2006 DEC -6 A 11:18  
DISTRICT OF UTAH  
BY: DEPUTY CLERK

**THE COURT ORDERS:**

- ☒ That the original petition be amended  
to include all allegations outlined
- ☐ No action
- ☐ Other

Tena Campbell  
Honorable Tena Campbell  
United States District Judge

Date: 12-6-2006

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS  
MACHINES CORPORATION,

Defendant/Counterclaim-Plaintiff.

ORDER GRANTING EX PARTE  
MOTION FOR LEAVE  
TO FILE OVERLENGTH REPLY  
MEMORANDUM

Case No. 2:03CV0294DAK

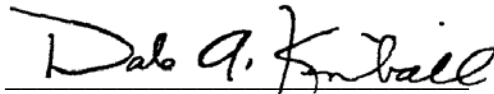
Honorable Dale A. Kimball  
Magistrate Judge Brooke C. Wells

This matter comes before the Court on the Ex Parte Motion of Plaintiff/Counterclaim-Defendant The SCO Group (“SCO”) for Leave to File Over-length Reply Memorandum in Further Support of SCO’s Motion for Relief for IBM’s Spoliation of Evidence (the “Reply

Memorandum”). The Court, having considered the matter, hereby determines that good cause and exceptional circumstances exist and hereby ORDERS that SCO be granted leave to file its over-length Reply Memorandum consisting of 23 pages, exclusive of face sheet, table of contents and authorities, appendixes and exhibits.

DATED: December 6<sup>th</sup>, 2006

BY THE COURT:

A handwritten signature in black ink, reading "Dale A. Kimball". The signature is written in a cursive, flowing style. The first name "Dale" is prominent, followed by "A." and "Kimball".

Honorable Dale A. Kimball



UNITED STATES DISTRICT COURT

FILED  
U.S. DISTRICT COURT  
UTAH

CENTRAL DIVISION

District of

UNITED STATES OF AMERICA

V.

CESAR LOPEZ-RAMIREZ

JUDGMENT IN A CRIMINAL CASE

(For Revocation of Probation or Supervision)

BY: DEPUTY CLERK

Case Number: DUTX 204CR000601-001

USM Number: 08301-081

Kristen Angelos

Defendant's Attorney

THE DEFENDANT:

☒ admitted guilt to violation of condition(s) 1 of the term of supervision.

☐ was found in violation of condition(s) \_\_\_\_\_ after denial of guilt.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
8 U.S.C. § 1326	Reentry of a Previously Removed Alien	

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has not violated condition(s) \_\_\_\_\_ and is discharged as to such violation(s) condition.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Defendant's Soc. Sec. No.: \_\_\_\_\_

Defendant's Date of Birth: 1979

Defendant's Residence Address: \_\_\_\_\_

12/4/2006

Date of Imposition of Judgment

Signature of Judge

The Honorable Ted Stewart

Name of Judge

U. S. District Judge

Title of Judge

12/5/2006

Date

Defendant's Mailing Address: \_\_\_\_\_

DEFENDANT: CESAR LOPEZ-RAMIREZ  
CASE NUMBER: DUTX 204CR000501-001

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :

8 months to run consecutive to sentence imposed in 2:06-CR-000520

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_ with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: CESAR LOPEZ-RAMIREZ

Judgment—Page 3 of 4

CASE NUMBER: DUTX 204CR000501 -001

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

None

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☐ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☐ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: CESAR LOPEZ-RAMIREZ  
CASE NUMBER: DUTX 204CR000501-001

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A ☐ Lump sum payment of \$ \_\_\_\_\_ due immediately, balance due  
☐ not later than \_\_\_\_\_, or  
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below); or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay.
- F ☒ Special instructions regarding the payment of criminal monetary penalties:  
\$100 SPA imposed on 2/18/2005 is reinstated.

Unless the court has expressly ordered otherwise in the special instruction above, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

FILED  
U.S. DISTRICT COURT

2006 DEC -5 P 1:45

DISTRICT OF UTAH

BY: DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PEDRO ARGENTA-PINTO, OSMAR  
CRUZ-VELASCO, MIGUEL BENABE-  
MARTINEZ & ALFONSO SALAZAR-  
MENDOZA,

Defendants.

TRIAL ORDER

Criminal No. 2:04-CR-000798-TS

The final pretrial conference in this matter is scheduled for Monday, March 12, 2007, at 2:00 p.m.

This case is set for a 10 -day trial to begin on Monday, March 26, 2007, at 8:30 a.m. The attorneys are expected to appear in court at 8:00 a.m. on the first day of trial for a brief pre-trial meeting.

Counsel are instructed as follows:

**1. Court-Imposed Deadlines.**

The deadlines described in this order cannot be modified or waived in any way by a stipulation of the parties. Any party that believes an extension of time is necessary **must** make an appropriate motion to the court.

**2. Jury Instructions**

The court has adopted its own standard general jury instructions, copies of which may be

obtained from the court prior to trial. The procedure for submitting proposed jury instructions is as follows:

(a) The parties must serve their proposed jury instructions on each other **at least ten business days before trial**. The parties should then confer in order to agree on a single set of instructions to the extent possible.

(b) If the parties cannot agree upon one complete set of final instructions, they may submit separately those instructions that are not agreed upon. However, it is not enough for the parties to merely agree upon the general instructions and then each submit their own set of substantive instructions. The court expects the parties to meet, confer, and agree upon the wording of the substantive instructions for the case.

(c) The joint proposed instructions (along with the proposed instructions upon which the parties have been unable to agree) must be filed with the court **at least five business days before trial**. All proposed jury instructions must be in the following format:

(i) An original and one copy of each instruction, labeled and numbered at the top center of the page to identify the party submitting the instruction (e.g., "Joint Instruction No. 1" or "Plaintiff's Instruction No. 1"), and including citation to the authority that forms the basis for it.

(ii) A 3.5" high density computer diskette containing the proposed instructions, without citation to authority, formatted for Wordperfect 6.1 through 8.0. Any party unable to comply with this requirement must contact the court to make alternative arrangements.

(d) Each party should file its objections, if any, to jury instructions proposed by any other party **no later than two business days before trial**. Any such objections must recite the proposed instruction in its entirety and specifically highlight the objectionable language contained therein. The objection should contain both a concise argument why the proposed language is improper and citation to relevant legal authority. Where applicable, the objecting party **must** submit, in conformity with paragraph 2(c)(i) - (ii) above, an alternative instruction covering the pertinent subject matter or principle of law. Any party may, if it chooses, submit a brief written reply in support of its proposed instructions **on the day of trial**.

(e) All instructions should be short, concise, understandable, and

neutral statements of law. Argumentative instructions are improper and will not be given.

(f) Modified versions of statutory or other form jury instructions (e.g., Federal Jury Practice and Instructions) are acceptable. A modified jury instruction must, however, identify the exact nature of the modification made to the form instruction and cite the court to authority, if any, supporting such a modification.

### **3. Verdict Forms**

The procedure outlined for proposed jury instructions will also apply to verdict forms.

### **4. Requests for Voir Dire Examination of the Venire**

The parties may request that, in addition to its usual questions, the court ask additional specific questions to the jury panel. Any such request should be submitted in writing to the court and served upon opposing counsel **at least five business days before trial**.

### **5. Motions in Limine**

All motions in limine are to be filed with the court **at least five business days before trial**, unless otherwise ordered by the court.

### **6. Trial Briefs**

Each party should file its Trial Brief, if any, no later than five business days before trial.

### **7. Exhibit Lists/Marking Exhibits**

All parties are required to prepare an exhibit list for the court's use at trial. The list contained in the pretrial order will not be sufficient; a separate list must be prepared. Plaintiffs should list their exhibits by number; defendants should list their exhibits by letter. Standard forms for exhibit lists are available at the clerk's office, and questions regarding the preparation of these lists may be directed to the courtroom deputy, Sandy Malley, at 524-6617. All parties are required to pre-mark their exhibits to avoid taking up court time during trial for such purposes.

### **8. Courtroom Conduct**

In addition to the rules outlined in the local rules, the court has established the following

ground rules for the conduct of counsel at trial:

(a) Please be on time for each court session. In most cases, trial will be conducted from 8:30 a.m. until 1:30 p.m., with two fifteen minute breaks. Trial engagements take precedence over any other business. If you have matters in other courtrooms, arrange in advance to have them continued or have an associate handle them for you.

(b) Stand as court is opened, recessed or adjourned.

(c) Stand when the jury enters or retires from the courtroom.

(d) Stand when addressing, or being addressed by, the court.

(e) In making objections and responding to objections to evidence, counsel should state the legal grounds for their objections with reference to the specific rule of evidence upon which they rely. For example, "Objection . . . irrelevant and inadmissible under Rule 402." or "Objection . . . hearsay and inadmissible under Rule 802."

(f) Sidebar conferences are discouraged and will not be allowed except in **extraordinary** circumstances. Most matters requiring argument should be raised during recess. Please plan accordingly.

(g) Counsel need not ask permission to approach a witness in order to **briefly** hand the witness a document or exhibit.

(h) Address all remarks to the court, not to opposing counsel, and do not make disparaging or acrimonious remarks toward opposing counsel or witnesses. Counsel shall instruct all persons at counsel table that gestures, facial expressions, audible comments, or any other manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.

(i) Refer to all persons, including witnesses, other counsel, and parties, by their surnames and not by their first or given names.

(j) Only one attorney for each party shall examine, or cross-examine, each witness. The attorney stating objections during direct examination shall be the attorney recognized for cross examination.

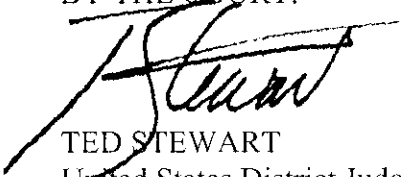


(k) Offers of, or requests for, a stipulation shall be made out of the hearing of the jury.

(l) When not taking testimony, counsel will remain seated at counsel table throughout the trial unless it is necessary to move to see a witness. Absent an emergency, do not leave the courtroom while court is in session. If you must leave the courtroom, you do not need to ask the court's permission. Do not confer with or visit with anyone in the spectator section while court is in session. Messages may be delivered to counsel table provided they are delivered with no distraction or disruption in the proceedings.

DATED this 5th day of December, 2006.

BY THE COURT:



TED STEWART  
United States District Judge

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**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

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**DONALD L. ARCHULETA,**

**Plaintiff,**

v.

**CLINT FRIEL et al.,**

**Defendants.**

**ORDER**

**Case No. 2:04CV444 DAK**

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This matter is before the court on Plaintiff Donald L. Archuleta's Motion to Dismiss with Prejudice. The court hereby GRANTS Plaintiff's motion [docket # 38], and this case is now closed.

DATED this 6<sup>th</sup> day of December, 2006.

BY THE COURT:



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DALE A. KIMBALL

United States District Judge

RECEIVED

FILED  
DEC 06 2006 DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

OFFICE OF JUDGE  
DAVID SAM  
2006 DEC -6 P 2: 12

DISTRICT OF UTAH

BY:   
DEPUTY CLERK

Equal Employment Opportunity  
Commission,

Plaintiff,

vs.

Granite Mill & Fixture Company,  
Defendant.

Case No. 2:04 CV 00923 DS

Senior Judge David Sam

**CONSENT DECREE**

The United States Equal Employment Opportunity Commission ("the Commission" or "EEOC") filed this action against Granite Mill & Fixture Company ("Granite Mill" or "Defendant") to enforce Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. (Title VII) and the Civil Rights Act of 1991, 42 U.S.C. §1981a, as amended. In its Complaint, the Commission alleges that Granite Mill subjected Ralph Ruiz to a hostile work environment due to his national origin ("the Action").

Granite Mill has timely filed answers to the Complaint and at all times denied the allegations in the Complaint.

It is understood that this Consent Decree does not constitute an admission by Granite Mill of any violation under Title VII of the Civil Rights Act of 1964, as amended, and that all allegations of liability are expressly denied by Granite Mill.

To avoid incurring further time and expense, the parties to this Consent Decree have decided to resolve this matter on the following terms.

The parties do not object to the jurisdiction of the Court over this action and waive their rights to a hearing and the entry of findings of fact and conclusions of law and to a jury trial.

It is hereby ORDERED, ADJUDGED AND DECREED:

1. This Decree resolves all claims by the Commission against Granite Mill, including claims for harassment, compensatory damages, punitive damages, and injunctive relief arising out of the issues in this lawsuit and its underlying and related charges.

**GENERAL INJUNCTIVE RELIEF**

2. Granite Mill and its officers, owners, directors and managers agree for the duration of the Decree that they will not (a) discriminate based on national origin, or (b) retaliate against any employee because he or she (i) opposes discriminatory practices made unlawful by Title VII, (ii) files a charge or assists or participates in the filing of a charge of discrimination, or (iii) assists or participates in an investigation or proceeding brought under Title VII.

**CORRECTIVE POLICIES AND PRACTICES**

3. Granite Mill will post, for the duration of this Decree, in a prominent place frequented by its employees at its facility located at 2200 S. Main Street in Salt Lake City, Utah, or any other facility to which Granite Mill may move during the duration of the Decree, the Notice attached as Exhibit A. The Notice shall be the same type, style and size as Exhibit A.

4. Granite Mill will institute and carry out policies and practices that help assure a work environment free from national origin discrimination for its employees and that allows employees to raise concerns or complaints without retaliation about matters, whether alleged, perceived, or actual, made unlawful by Title VII.

5. Granite Mill will provide training on national origin and retaliation, according to the following terms:

A. Granite Mill will retain and pay for consultant/lecturer(s) who

will provide consultation and training as set forth below for a period of one year from the date of this Decree.

B. The consultant/lecturer(s) will conduct two live seminar-training sessions, held at four and 10 months after the effective date of the Decree. All employees, including management and supervisors, shall attend these sessions. The session shall be videotaped for those employees who are unable to attend the live sessions. Granite Mill shall keep a written record of all employees who attend the live trainings or watch the videotape of it. The registry of attendance shall be retained by Granite Mill for the duration of the Decree.

C. The seminar-training sessions shall be no less than one and one-half hours, including 30 minutes of questions and answers.

D. The seminars will include the subjects of diversity awareness and what constitutes national origin discrimination, as well as retaliation for engaging in protected activity under Title VII. This training will cover discrimination in the hiring, firing, compensation, assignment or other terms, conditions or privileges of employment; the prevention of discrimination; how to provide a work environment free from discrimination, harassment and retaliation; and to whom and by what means employees may complain if they feel they have been subjected to discrimination, harassment or retaliation in the workplace. The session shall also review and explain the policies set out in Paragraph 6 of this Decree.

E. During the live training seminars, Granite Mill's President will speak about the discipline that can be taken against employees who commit acts of discrimination, harassment or retaliation or allow discrimination, harassment or retaliation to occur in the workplace; the importance of maintaining an environment free of discrimination; and Granite Mill's anti-discrimination policies, in accordance with Paragraph 6 of this Decree.

F. The Commission, at its discretion and with prior notice to Granite Mill, may designate Commission representatives to attend the first seminar-training session. The representatives shall have the right to fully participate in the session.

6. Within thirty days of the entry of this Decree, Granite Mill will review and, if necessary, revise its written policies concerning discrimination and retaliation to conform with the law. This written policy must include at a minimum:

A. A strong and clear commitment to a workplace free of national origin discrimination;

B. A strong and clear message of encouragement to persons who believe they have been discriminated against to come forward;

C. A description of the consequences, up to and including termination, that will be imposed upon violators of the policy;

D. A promise of maximum feasible confidentiality for persons who believe that they have been discriminated against in violation of the policy;

E. An assurance of non-retaliation for persons who believe they have been discriminated against and witnesses;

F. That national origin discrimination or harassment by any person, including management officials, supervisors, vendors, suppliers, third parties and customers is prohibited and will not be tolerated;

G. The identification of specific alternative individuals, with their telephone numbers, to whom employees who have been subjected to discrimination can report the discrimination and who have the authority to investigate allegations of discrimination in a neutral and confidential manner;

H. A written statement that the employee may report the harassment to designated persons outside of his or her chain of management should the complainant believe managers in the chain of command have a

conflict of interest, are implicated in the allegations, or may not adequately investigate the complaint;

I. Assurances that Granite Mill will investigate allegations of national origin discrimination or harassment promptly, fairly, reasonably and effectively by appropriate investigators and take appropriate corrective action to make victims whole and to eradicate the discrimination; and

J. Information regarding the employee's right to file a charge of discrimination with the EEOC or the Utah Anti-Discrimination and Labor Commission.

7. These policies shall be posted in a prominent location at Granite Mill. These policies shall be transmitted to Granite Mill's employees by its President and distributed to each current employee within thirty days of the entry of the Decree. These policies shall be distributed to all new employees when hired.

8. Granite Mill shall institute a procedure which evaluates top management and all supervisory employees on their performance in responding to complaints of discrimination and for their compliance with EEO laws, including Title VII. The failure of such an employee to enforce the policies and the anti-discrimination laws must result in appropriate disciplinary action.

9. Granite Mill shall promptly, reasonably and appropriately investigate all complaints of national origin discrimination, as appropriate. The investigation must include a finding of whether discrimination occurred, a credibility assessment, interviews of all potential victims and witnesses identified, and concurrent notes of the investigation, as appropriate. Granite Mill shall take immediate appropriate corrective action to make discrimination victims whole, to discipline violators and to eradicate the discrimination, as appropriate.

10. Granite Mill shall not retain documents related to any such investigation referred to in Paragraph 9 in any of the complainants' personnel

files. All disciplinary actions taken against employees for violation of any aforementioned policy will be retained in the violators' personnel file. In those cases in which no conclusion may be reached on the allegations, the investigation documents shall be maintained in a separate file.

#### **REPORTING BY GRANITE MILL AND ACCESS BY EEOC**

11. Granite Mill shall report in writing to the Regional Attorney of the Commission's Phoenix District Office at 3300 N. Central Ave., Suite 690, Phoenix, Arizona 85012, at five months and eleven months from the entry of the Decree the following information:

A. Any changes, modifications, revocations, or revisions to its policies and procedures which concern or affect the subject of national origin discrimination or retaliation.

B. The registry of persons attending the live seminars and videotaped sessions required in Paragraph 5 of this Decree, as well as a list of personnel employed by Granite Mill on the days of the seminar-training sessions.

C. Confirmation that (i) the Notice required in Paragraph 3 of this Decree was posted and the locations where it was posted; and (ii) the policies required in Paragraph 6 were distributed to each current and new employee and posted.

12. The Commission, upon seven (7) days written notice to Granite Mill's President, shall have the right to enter and inspect Granite Mill's premises to insure compliance with this Decree and Title VII's prohibition of national origin discrimination, as well as retaliation.

#### **MONETARY RELIEF**

13. Granite Mill agrees to pay Ralph Ruiz the amount of \$18,000 pursuant to paragraphs 14 and 15.



14. Within fourteen (14) business days of the entry of this Decree, Granite Mill shall pay the amount listed in paragraph 13 by cashier's check or money order. This payment represents settlement of compensatory damages. Granite Mill will issue appropriate federal and state tax forms to Mr. Ruiz within thirty (30) days of making such payment.

15. The check provided for in Paragraph 14 of this Decree shall be mailed directly by Granite Mill to Ralph Ruiz at the address supplied by the Commission. Within three business days of issuance of the check, Granite Mill shall submit a copy of the cashier's check or money order and related correspondence to the Regional Attorney, Equal Employment Opportunity Commission, 3300 North Central Avenue, Suite 690, Phoenix, Arizona, 85012. Issuance and mailing of the check shall constitute compliance with the payment obligation set forth herein.

16. Granite Mill will not condition the receipt of the individual relief on Mr. Ruiz's agreement to maintain as confidential the terms of this Decree or other matters in the public record.

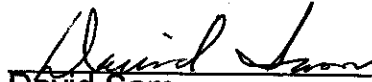
#### **COSTS AND DURATION**

17. Each party will bear its costs and attorney's fees incurred as a result of this action through the filing of this Decree.

18. The duration of this Decree will be one year from its entry. This Court will retain jurisdiction over this action for the duration of the Decree, during which the Commission may petition this Court for compliance with this Decree. Should the Court determine that Granite Mill has not complied with this Decree, appropriate relief, including extension of this Decree for such period as may be necessary to remedy its non-compliance, may be ordered. This Decree will expire by its own terms at the end of twelve months from the date of entry, without further action by the parties.

19. The parties agree to entry of this Decree and judgment subject to final approval by the Court.

ENTERED AND ORDERED this 6<sup>th</sup> day of December, 2006.

  
\_\_\_\_\_  
David Sam  
United States District Court Judge

APPROVED AND CONSENTED TO:

GRANITE MILL & FIXTURE  
COMPANY, by:

  
W. GARY SANDBERG  
President, Granite Mill

  
WM. KELLY NASH

HILL, JOHNSON & SCHMUTZ, L.C.  
Jamestown Square, Suite 200  
3319 N. University Avenue  
Provo, UT 84604  
Attorneys for Granite Mill

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,  
by:

MARY JO O'NEILL  
Regional Attorney

SALLY SHANLEY  
Supervisory Trial Attorney

KAREN E. NUTTER  
Trial Attorney

Phoenix District Office  
3300 North Central Avenue  
Suite 690  
Phoenix, Arizona 85012  
Attorneys for Plaintiff

APPROVED AND CONSENTED TO:

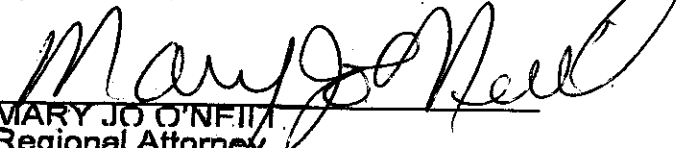
GRANITE MILL & FIXTURE  
COMPANY, by:

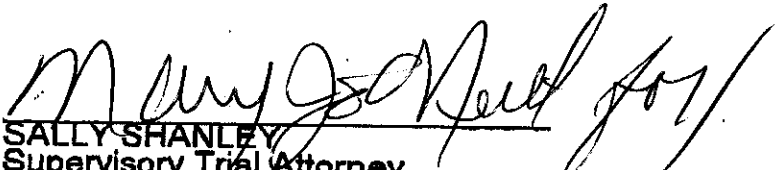
  
W. GARY SANDBERG  
President, Granite Mill

  
WM. KELLY NASH

HILL, JOHNSON & SCHMUTZ, L.L.C.  
Jamestown Square, Suite 200  
3319 N. University Avenue  
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SALLY SHANLEY  
Supervisory Trial Attorney

  
KAREN E. NUTTER  
Trial Attorney

Phoenix District Office  
3300 North Central Avenue  
Suite 690  
Phoenix, Arizona 85012  
Attorneys for Plaintiff

**United States District Court**

United States Courthouse  
Salt Lake City, Utah 84101

**Dee Benson**  
*United States District Chief Judge*

801-524-6160

**MEMORANDUM**

**TO:** Markus Zimmer  
Clerk of Court

**FROM:** Dee Benson  
U.S. District Chief Judge

**DATE:** December 6, 2006

**SUBJECT:** 2:05cr753 DB USA v. Khalid El Sheriff

I find that I must recuse myself from this case.

Would you please see that this case is reassigned to another judge pursuant to our computer program.

Dee Benson

A handwritten signature in black ink that reads "Dee Benson". The signature is written in a cursive, flowing style.

Chief Judge

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Judge David Sam  
DECK TYPE: Criminal  
DATE STAMP: 12/06/2006 @ 09:45:15  
CASE NUMBER: 2:05CR00753 DS

FILED  
U.S. DISTRICT COURT

2006 DEC -6 A 11:19

JUDGE TENA CAMPBELL

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

DISTRICT OF UTAH, CENTRAL DIVISION

BY: DEPUTY CLERK

UNITED STATES OF AMERICA,

: Case No: 2:05 CR 805 TC

Plaintiff,

: ORDER FOR ADDITIONAL TIME TO

vs.

: FILE JAMES HEARING BRIEF

DENNIS EVANSON, et al.,

Defendants.

Having received a motion by the United States for an Order for Additional Time to File James Hearing Brief in the above-entitled case, and for good cause appearing,

IT IS HEREBY ORDERED by the Court that the United States have until December 6, 2006, to file its James Hearing brief.

DATED this 5 day of December, 2006.

BY ORDER OF THE COURT:

*Tena Campbell*

TENA CAMPBELL, Judge  
United States District Court

---

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MIGUEL VAZUEZ,

Defendants.

:  
:  
:  
:  
:  
:  
:

ORDER TO CONTINUE JURY  
TRIAL

[Case No.2:05CR 915](#) PGC

Judge Paul G. Cassell

---


This matter was set for a status hearings on August 8, 2006, September 20, 2006, and November 29, 2006. Miguel Vazquez is represented by Viviana Ramirez and the United States is represented by Karin Fojtik.

IT IS FURTHER ORDERED: because of the parties need to further prepare this matter, and based on the motion to continue filed in this matter, the time between **August 8, 2006**, and the new status/change of plea date of **12/21/2006**, is excluded from the calculation under the Speedy Trial Act in order to grant defense counsel and the government sufficient time to prepare for trial and obtain the

results of the psychological examination. The Court finds that such a continuance is required for effective preparation for trial taking into account the exercise of due diligence. The court further finds that this additional time outweighs the best interest of the public and the defendant in a speedy trial pursuant to [18 U.S.C. § 3161\(h\)\(8\)\(A\)](#).

DATED this 6th day of December, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell". The signature is written in a cursive, flowing style.

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Hon. Paul G. Cassell  
U.S. DISTRICT COURT JUDGE



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IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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PROSPER, INC., a Utah corporation,  
Plaintiff,

vs.

INNOVATIVE SOFTWARE  
TECHNOLOGIES, INC., a California  
corporation,  
Defendant.

ORDER GRANTING EX PARTE MOTION  
TO WITHDRAW AS COUNSEL FOR  
PROSPER, INC.


Case No. 2:05-CV-00098 PGC

Before the court is Mary Anne Wood's ex parte motion to withdraw as counsel for Prosper, Inc. (#65). The court GRANTS the motion (#65). It is hereby ordered that Mary Anne Wood and Margaret C. Tarkington are withdrawn as counsel of record in this matter, effective as of the date of this Order.

SO ORDERED.

DATED this 6th day of December, 2006.

BY THE COURT:

  
\_\_\_\_\_  
Paul G. Cassell  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

WILLIE C. MOORE,	)	
	)	
Plaintiff,	)	Case No. 2:05-CV-229 DAK
	)	
v.	)	District Judge Dale Kimball
	)	
CLINTON FRIEL et al.,	)	<b>O R D E R</b>
	)	
Defendants.	)	Magistrate Judge David Nuffer

---

Plaintiff, Willie C. Moore, filed a *pro se* prisoner civil rights complaint.<sup>1</sup> Plaintiff now moves for appointed counsel.

Plaintiff has no constitutional right to counsel.<sup>2</sup> However, the Court may in its discretion appoint counsel for indigent inmates.<sup>3</sup> "The burden is upon the applicant to convince the court that there is sufficient merit to his claim to warrant the appointment of counsel."<sup>4</sup> When deciding whether to appoint counsel, the district court should consider a variety of factors, "including 'the merits of the litigant's claims, the nature of the factual issues raised in the claims, the litigant's ability to present his claims, and the complexity of the legal issues

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<sup>1</sup>See [42 U.S.C.S. § 1983 \(2006\)](#).

<sup>2</sup>See [Carper v. Deland, 54 F.3d 613, 616 \(10th Cir. 1995\)](#); [Bee v. Utah State Prison, 823 F.2d 397, 399 \(10th Cir. 1987\)](#).

<sup>3</sup>See [28 U.S.C.S. § 1915\(e\)\(1\) \(2006\)](#); [Carper, 54 F.3d at 617](#); [Williams v. Meese, 926 F.2d 994, 996 \(10th Cir. 1991\)](#).

<sup>4</sup>[McCarthy v. Weinberg, 753 F.2d 836, 838 \(10th Cir. 1985\)](#).

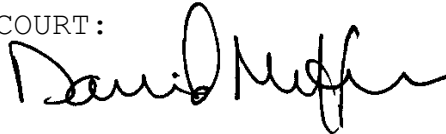
raised by the claims.'"<sup>5</sup>

Considering the above factors, the Court concludes here that although Plaintiff may have asserted a colorable claim, the issues in this case are not complex and Plaintiff clearly is not incapacitated or unable to adequately function in pursuing this matter. Thus, the Court denies for now Plaintiff's motions for appointed counsel.

IT IS HEREBY ORDERED that Plaintiff's motion for appointed counsel is denied; however, if, after the case is screened, it appears that counsel may be needed or of specific help, the Court will ask an attorney to appear pro bono on Plaintiff's behalf. (See File Entry # 26.)

DATED this 6th day of December, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "David Nuffer", written over a horizontal line.

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DAVID NUFFER  
United States Magistrate Judge

---

<sup>5</sup>[\*Rucks v. Boergermann\*, 57 F.3d 978, 979 \(10th Cir. 1995\)](#) (quoting *Williams*, 926 F.2d at 996); accord [\*McCarthy\*, 753 F.2d at 838-39](#).

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**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

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**SANTA BARBARA BANK & TRUST et  
al.,**

**Plaintiffs,**

**v.**

**INNOVATIVE MEDICAL GROUP,**

**Defendant.**

**ORDER**

**Case No. 2:05CV302 DAK**

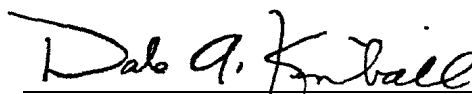
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On August 29, 2005, Plaintiffs filed a Motion for Partial Summary Judgment. On November 10, 2005, the court signed an Order granting the parties' stipulated motion for an open-ended extension of time to respond to the motion while the parties discussed settlement. On January 20, 2006, the court issued an Order stating that for administrative purposes, the court would deny the motion without prejudice to renew or refile the motion at a later date. On September 13, 2006, Plaintiffs renewed their motion. After Defendant's time for responding to the motion had expired, Plaintiffs filed a request to submit for a decision on October 25, 2006. To date, Defendant has still not responded and has not requested an extension of time to respond.

Accordingly, the court hereby GRANTS Plaintiffs' Motion for Summary Judgment, in which Plaintiffs claim they are entitled to \$86,795.28, plus attorneys' fees, costs, and post-judgment interest. The Clerk of the Court is directed to enter Judgment for Plaintiffs.

DATED this 6<sup>th</sup> day of December, 2006.

BY THE COURT:



DALE A. KIMBALL

United States District Judge

RECEIVED

FILED  
U.S. DISTRICT COURT

DEC 05 2006

2006 DEC -6 A 11: 18 OFFICE OF  
JUDGE TENA CAMPBELL

DISTRICT OF UTAH

Chad T. Warren #10337

MACARTHUR HEDER & METLER, PLLC

3507 North University Ave. Suite 350

Provo, UT 84604

Telephone: (801) 377-1900

Facsimile: (801) 377-1901

BY: \_\_\_\_\_  
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DISTRICT

COLIN METLER,

Plaintiff,

v.

MICHELE STORER, BRYAN  
STORER, MED-X MOBILE LABS,  
LLC, and DOES I – V, unknown parties,

Defendants,

Case No.: 2:05CV00386 TC

Judge: CAMPBELL

ORDER APPOINTING RECEIVER

This matter having come before the Court upon the Court's own request in its letter to the parties dated August 30, 2006, requesting the parties select a mutually acceptable receiver to oversee the winding up of the business affairs of Med-X Mobile Labs, LLC, the parties having agreed upon a mutually acceptable receiver, and good cause appearing therefore, the Court does hereby ORDER, ADJUDGE and DECREE as follows:

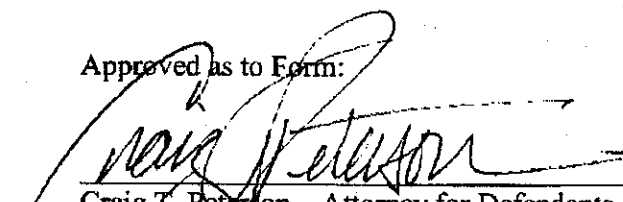
1. That Kent A. Fitzgerald (hereinafter referred to as "receiver") who is located at 6076 South 900 East, Suite 100, Salt Lake City, UT 84121, phone number 801-263-7990, be appointed as the receiver to oversee the winding up of the business affairs of Med-X Mobile Labs, LLC.
2. The receiver shall have all powers and authority necessary to accomplish the receiver's duties as set forth in the FINAL ORDER FOR DISSOLUTION OF MED-X MOBILE LABS, LLC, ASSIGNMENT OF RECEIVER, AND DISTRIBUTION OF BUSINESS ASSETS entered by this Court on August 16, 2006.
3. The receiver shall be reasonably compensated and/or reimbursed from the assets of Med-X Mobile Labs, LLC.


DATED this 5 day of December, 2006.

BY THE COURT

  
Judge Tena Campbell

Approved as to Form:

  
Craig T. Peterson – Attorney for Defendants

  
Chad T. Warren – Attorney for Plaintiff

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

RICHARD A. SMITH,  
Plaintiff,

vs.

UNITED STATES OF AMERICA,  
Defendant.

ORDER GRANTING MOTION TO  
EXCLUDE TESTIMONY OF  
TOFFER AND DICKAMORE

Case No. 2:05-CV-418 TS


This matter came before the Court at the final pretrial conference for hearing on the United States' Motion to Exclude Testimony of Marvin Toffer and Paul Dickamore. Counsel for Plaintiff represented that he preferred addressing the Motion at the final pretrial conference rather than filing a written response. The Court being fully advised, it is therefore

ORDERED that United States' Motion to Exclude Testimony of Marvin Toffer and Paul Dickamore (Docket No. 75) is GRANTED and the testimony of said witnesses shall

be excluded at trial unless they are made available for deposition within the time that counsel for the United States is in Utah, during the week of December 4, 2006.

DATED December 5, 2006.

BY THE COURT:



---

TED STEWART  
United States District Judge



Tracy H. Fowler (1106)  
Angela Stander (9623)  
SNELL & WILMER L.L.P.  
15 West South Temple, Suite 1200  
Gateway Tower West  
Salt Lake City, Utah 84101-1004  
Telephone: (801) 257-1900  
Facsimile: (801) 257-1800

William H. Shreve (*Admitted Pro Hac Vice*)  
John B. Sganga, Jr. (*Admitted Pro Hac Vice*)  
John F. Heal (*Admitted Pro Hac Vice*)  
Sheila N. Swaroop (*Admitted Pro Hac Vice*)  
KNOBBE MARTENS OLSON  
& BEAR L.L.P.  
2040 Main Street 14<sup>th</sup> Floor  
Irvine, California 92614  
Telephone: (949) 760-0404  
Facsimile: (949) 760-9502  
*Attorneys for Defendant and Counterclaimant*  
*Yamaha Motor Corporation USA*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

BOSS INDUSTRIES, INC.,

Plaintiff,

vs.

YAMAHA MOTOR CORPORATION USA

Defendant

YAMAHA MOTOR CORPORATION USA

Counterclaimant

vs.

BOSS INDUSTRIES, INC. and JAMES  
ATHERLEY,

Counterclaim Defendants

[PROPOSED] ORDER GRANTING EX  
PARTE MOTION FOR LEAVE TO FILE  
OVERLENGTH COMBINED (1)  
OPPOSITION OF YAMAHA MOTOR  
CORPORATION USA TO BOSS  
INDUSTRIES, INC.'S MOTION FOR  
CLAIM CONSTRUCTION, AND (2)  
MEMORANDUM IN SUPPORT OF  
YAMAHA'S MOTION FOR CLAIM  
CONSTRUCTION

Case No. 2:05CV00422 DAK

U.S. District Judge Dale A. Kimball

Magistrate Judge Samuel Alba

Having reviewed Defendant and Counterclaimant Yamaha Motor Corporation USA's ex parte motion for leave to file overlength COMBINED (1) OPPOSITION OF YAMAHA MOTOR CORPORATION USA TO BOSS INDUSTRIES, INC.'S MOTION FOR CLAIM CONSTRUCTION, AND (2) MEMORANDUM IN SUPPORT OF YAMAHA'S MOTION FOR CLAIM CONSTRUCTION, and for good cause appearing,

IT IS HEREBY ORDERED that Yamaha's ex parte request for leave to file overlength brief totaling 40 pages is GRANTED.

DATED this 6<sup>th</sup> day of December, 2006.

BY THE COURT:

A handwritten signature in black ink, reading "Dale A. Kimball". The signature is written in a cursive, flowing style. The first name "Dale" is written in a larger, more prominent script, followed by "A." and "Kimball". The signature is positioned above a horizontal line.

Honorable Dale A. Kimball  
United State District Court Judge

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

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TURNER GAS COMPANY, a Nevada  
corporation,

Plaintiff and Counterclaim Defendant,

v.

MARK A. HARRIS, an individual,  
SERVICES GROUP, INC.; KAMPS  
COMPANY, et al.,

Defendants and Counterclaimants.

ORDER GRANTING PLAINTIFF'S  
MOTION TO AMEND

Civil No. 2:05 cv 441 TC

Judge Tena Campbell

Magistrate Judge Brooke C. Wells

Before the court is Plaintiff Turner Gas' motion to amend/correct complaint.<sup>1</sup> Turner seeks to "add two new defendants and two new causes of action."<sup>2</sup> As stated in the Federal Rules, leave to amend "shall be freely given when justice so requires."<sup>3</sup> The relevant factors courts typically consider when deciding a motion for leave to amend include: "whether the amendment will result in undue prejudice, whether the request was unduly and inextricably delayed, was offered in good faith, or that the party had had sufficient opportunity to state a claim and failed."<sup>4</sup> Here, the court finds that Defendants are not unduly prejudiced. The court further finds that any delay was justified because of the recent discovery of information that led to the amended claims. And finally, the court finds that the amendment is offered in good faith. Accordingly, the court GRANTS Plaintiff's motion to amend/correct complaint.

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<sup>1</sup> Docket no. 116.

<sup>2</sup> Mem. in Supp. p. 1.

<sup>3</sup> [Fed. R. Civ. P. 15\(a\)](#).

The last day to amend pleadings or add parties was September 1, 2005 pursuant to the amended scheduling order dated January 11, 2006.<sup>5</sup> Plaintiff now seeks to amend or correct the complaint by adding two new defendants and two new causes of action. Turner argues that the amendment is justified because of the recent discovery of new evidence that supports the amendment. The new evidence-including some documents produced on September 14, 2006-was produced after this court denied Defendants' motion to quash subpoenas and granted Turner's motion to compel. In fact, according to Turner, some of the events that underlie the new claims did not even occur by the deadline to amend pleadings or add parties, September 1, 2005.<sup>6</sup> Thus, it would have been impossible to include the newly discovered information in an amendment before the deadline.

Turner next argues that Defendants will not be unduly prejudiced because trial is set for January 2008 and the discovery deadline is March 31, 2007, approximately four months away. Moreover, "Turner's new claims arise from the same or similar subject matter and are substantially factually related to the facts supporting the existing claims."<sup>7</sup>

Finally, Turner argues that the recent events which give rise to its new claims could be brought in a separate civil action before this court. Doing this, however, would waste not only the parties' resources but also the court's resources. Therefore, an amendment is proper to "maximize judicial economy and [to] minimize expense to the parties."<sup>8</sup>

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<sup>4</sup> [\*State Distributors, Inc. v. Glenmore Distilleries Co.\*, 738 F.2d 405, 416 \(10th Cir. 1984\)](#).

<sup>5</sup> Docket no. 31. Another amended scheduling order was entered in October 2006, but it did not modify the date to amend pleadings or add parties.

<sup>6</sup> See Reply p. 3 fn. 2.

<sup>7</sup> *Id.* p. 4.

In opposition Defendants offer two primary arguments. First, Turner’s motion is untimely.<sup>9</sup> As noted by Defendants, “it is well settled in this circuit that untimeliness alone is a sufficient reason to deny leave to amend.”<sup>10</sup>

Second, Defendants argue that they would be unduly prejudiced by allowing the amendment. According to Defendants, there is prejudice here because “the amended claims arise out of subject matter different from what was set forth in the complaint and [there are] significant new factual issues.”<sup>11</sup>

#### I. The Court Finds Plaintiff’s Motion to be Timely

“The courts of appeal are not in agreement regarding the showing necessary to establish ‘undue’ delay.”<sup>12</sup> But, the Tenth Circuit “focuses primarily on the reasons for the delay.”<sup>13</sup> Denial of leave to amend is proper when the moving party lacks an adequate explanation for the delay.<sup>14</sup> In essence, “courts may deny leave for untimeliness or undue delay without a showing of prejudice to the opposing party.”<sup>15</sup>

Here, the amendment is based on evidence that was obtained during the discovery process. Some of it came following this court’s prior orders denying a motion to quash and granting a motion to compel. “There is no undue delay in seeking leave to amend if plaintiffs acquire knowledge of the facts behind the new claim only through recent discovery and after

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<sup>8</sup> *Id.* p. 5.

<sup>9</sup> *See op* p. 2.

<sup>10</sup> [\*Frank v. U.S. West, Inc.\*, 3 F.3d 1357, 1365 \(10th Cir. 1993\)](#).

<sup>11</sup> *Op.* p. 3 (quoting [\*Minter v. Prime Equipment Co.\*, 451 F.3d 1196, 1207 \(10th Cir. 2006\)](#)).

<sup>12</sup> [\*Minter\* 451 F.3d at 1205](#).

<sup>13</sup> *Id.* at 1206.

<sup>14</sup> *See* [\*Frank\*, 3 F.3d at 1365-66](#); [\*Minter\* 451 F.3d at 1206](#); *see also* [\*Durham v. Xerox Corp.\*, 18 F.3d 836, 840 \(10th Cir. 1994\)](#) (“[U]nexplained delay alone justifies the district court’s discretionary decision.”).

<sup>15</sup> [\*Deghand v. Wal-Mart Store, Inc.\*, 904 F.Supp. 1218, 1221 \(D.Kan. 1995\)](#).

conducting a reasonable investigation of that information.”<sup>16</sup> As such, the court finds that there was no undue delay in this case.

## II. The Court Finds There is no Undue Prejudice

Leave to amend “shall be freely given when justice so requires.”<sup>17</sup> But, the liberality in granting leave to amend is altered when the amendment would cause an opposing party undue prejudice.<sup>18</sup> Prejudice “means undue difficulty in prosecuting or defending a lawsuit as a result of a change of tactics or theories on the part of the other party.”<sup>19</sup> “The burden of showing prejudice rests with the party opposing the amendment.”<sup>20</sup> The Tenth Circuit has stated “There is invariably some practical prejudice resulting from an amendment, but this is not the test for refusal of an amendment.”<sup>21</sup> Instead, “leave to amend is not denied unless the amendment would work an injustice to the defendants.”<sup>22</sup> Finally, “[a] change in theory alone is not an adequate ground for denying an amendment, unless it also causes prejudice to the defendants.”<sup>23</sup>

Here, the trial date is not until 2008 and discovery does not end until March 2007. So, there is adequate time for Defendants to conduct discovery on Plaintiff’s new theories. Moreover, Plaintiff’s new theories are based on the same facts and circumstances that underlie the other claims in their current complaint. Thus, the court finds there is no prejudice to Defendants notwithstanding the addition of new theories of liability.

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<sup>16</sup> [Koch v. Koch Industries](#), 127 F.R.D. 206, 211 (D.Kan. 1989); see also [Island Creek Coal Co. v. Lake Shore, Inc.](#), 832 F.2d 274, 279 (4th Cir. 1987); [Deghand](#), 904 F.Supp. at 1221.

<sup>17</sup> Fed. R. Civ. P. 15(a).

<sup>18</sup> See [DCD Programs, Ltd. v. Leighton](#), 833 F.2d 183, 186 (9th Cir. 1987); [Koch](#), 127 F.R.D. 209.

<sup>19</sup> [Federal Depositi Ins. Corp. v. Berr](#), 643 F.Supp. 357, 369 (D.Kan. 1986) (quoting [Deakyne v. Commisioners of Lewes](#), 416 F.2d 290, 300 (3rd Cir. 1969)).

<sup>20</sup> [Koch](#), 127 F.R.D. at 210.

<sup>21</sup> [Patton v. Guyer](#), 443 F.2d 79, 86 (10th Cir. 1971).

<sup>22</sup> [Koch](#), 127 F.R.D. 209.

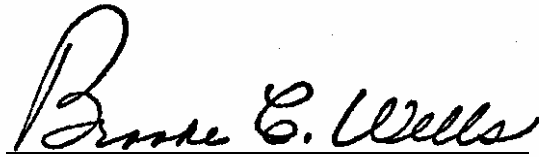
<sup>23</sup> *Id.* at 210.

Next, the court further finds that the addition of the proposed defendants would not prejudice the existing Defendants. One of the new proposed defendants is the surviving entity of a merger between two existing defendants.<sup>24</sup> Therefore, it should not come as any surprise that the new entity must still defend claims made against its predecessor in interest.

Finally, the court finds that based on the record before it, the motion to amend is offered in good faith and it is not futile.

Accordingly, Plaintiff's motion to amend/correct complaint is GRANTED.

DATED this 6th day of December, 2006.

A handwritten signature in black ink, reading "Brooke C. Wells". The signature is written in a cursive, flowing style. The first name "Brooke" is written with a large, prominent "B". The last name "Wells" is written with a large, prominent "W". The signature is positioned above a horizontal line.

Brooke C. Wells  
United States Magistrate Judge

---

<sup>24</sup> See Mem. in Supp p. 4.

---

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**

**CENTRAL DIVISION**

---

**WINSTON B. CHRISTIANSEN and  
JUDITH M. CHRISTIANSEN,**

**Plaintiffs,**

**v.**

**BACTERIN INTERNATIONAL, INC., a  
Nevada corporation; BACTERIN, INC., a  
Montana corporation; GUY COOK, an  
individual; and MITCHELL T.  
GODFREY, an individual,**

**Defendants.**

**STIPULATED AMENDED  
SCHEDULING ORDER**

**Case No. 2:05CV00486 TC**

**Judge Tena Campbell**

**Magistrate Judge Paul M. Warner**

---

Plaintiffs Winston B. Christiansen and Judith M. Christiansen (“Christiansens”) and Defendants Bacterin International, Inc., Guy S. Cook and Mitchell T. Godfrey (collectively, “Bacterin”) have stipulated and agreed that the Scheduling Order in this matter may be modified only as set forth below. Because the parties have been diligently conducting discovery but require the following modifications to be able to adequately prepare the case for trial, the court finds good cause to amend the scheduling order. Accordingly, the court ORDERS that the scheduling order be modified as follows:

1. All fact discovery in this matter shall be completed on or before January 31, 2007.
2. Affirmative expert disclosures shall be made on or before January 31, 2007.
3. Rebuttal expert disclosures shall be made on or before February 16, 2007.
4. All expert discovery shall be completed on or before March 23, 2007.



5. All dispositive motions shall be filed on or before March 30, 2007.

All other dates in the scheduling order shall remain the same.

DATED this 6th day of December, 2006.

BY THE COURT:

A handwritten signature in cursive script, reading "Paul M. Warner", is written over a horizontal line.

Paul M. Warner  
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

MARTIN ROBINSON aka	)	
ENOCH HANKERSON,	)	
	)	
Plaintiff,	)	Case No. 2:05-CV-574 TC
	)	
v.	)	District Judge Tena Campbell
	)	
CLINT KEISEL et al.,	)	<b>O R D E R</b>
	)	
Defendants.	)	Magistrate Judge David Nuffer

---

Plaintiff, Martin Robinson, formerly an inmate at Utah State Prison, moves the Court to recognize his alias of Enoch Hankerson and to waive his remaining payments toward his filing fee. When Plaintiff made the latter motion, he had left prison and was "struggling to recover/find work." More recently, though, Plaintiff notified the Court that he is imprisoned again, this time at Salt Lake County Jail. He has submitted no documentation about the status of his current inmate account.

IT IS HEREBY ORDERED that Plaintiff's motion that the Court recognize his alias of "Enoch Hankerson" is granted. (See File Entry # 19.)

IT IS FURTHER ORDERED that Plaintiff's motion for waiver of his remaining filing fee is denied. (See File Entry # 21.) Plaintiff has provided no documentation to support this motion. And, anyway, according to the attached consent-to-collection-of-fees form, Plaintiff must pay toward his filing fee only when his account balance reaches ten dollars in a particular month.

Because Plaintiff has now moved to the Salt Lake County Jail, IT IS FINALLY ORDERED that, within thirty days of this Order, Plaintiff must sign, then copy, the attached consent-to-collection-of-fees form. He must give the original to the jail inmate accounting office and send the copy to the Court. If Plaintiff does not comply, his case will be dismissed.

DATED this 6th day of December, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "David Nuffer", is written over a horizontal line.

DAVID NUFFER  
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

CONSENT TO COLLECTION OF FEES FROM INMATE TRUST ACCOUNT

I, Martin Robinson aka Enoch Hankerson (Case No. 2:05-CV-574 TC), understand that even when the Court grants my application to proceed *in forma pauperis* and files my complaint, I must still eventually pay the entire filing fee of \$250.00. I understand that I must pay the complete filing fee even if my complaint is dismissed.

I further consent for the appropriate institutional officials to collect from my account on a continuing basis each month, an amount equal to 20% of each month's income. Each time the amount in the account reaches \$10, the Trust Officer shall forward the interim payment to the Clerk's Office, U.S. District Court for the District of Utah, 350 South Main, #150, Salt Lake City, UT 84101, until such time as the \$250.00 filing fee is paid in full.

By executing this document, I also authorize collection on a continuing basis of any additional fees, costs, and sanctions imposed by the District Court.

---

Signature of Inmate  
Martin Robinson aka Enoch Hankerson

---

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

---

**R. MICHAEL ANDERSON and  
ROBERT H. ANDERSON,**

**Plaintiffs,**

**vs.**

**MARC S. JENSON, WILSHIRE  
INVESTMENTS, LLC, DAVID G.  
TURCOTTE, BRENT B. WOODSON and  
THE SPRINGS OF ST. MORITZ  
RESORT, L.C.,**

**Defendants.**

**ORDER**

**Case No. 2:05CV720 DAK**

---

This matter is before the court on (1) Plaintiffs' Ex Parte Motion for Extension of Time for the Filing of Plaintiffs' Amended Complaint, (2) Defendant Turcotte's ("Turcotte") Motion to Dismiss and for Attorney's Fees, and (3) Defendant Wilshire Investments, LLC's ("Wilshire") Motion to Dismiss.

On July 7, 2006, the court dismissed Defendant Turcotte from this action without prejudice and granted Plaintiffs leave to amend their Complaint by no later than September 7, 2006. On September 7, 2006, Plaintiffs moved for an indefinite extension of time to file their Amended Complaint. On September 18, 2006, Turcotte objected to the motion for an indefinite extension of time and also asked to be dismissed with prejudice from this action. On September 25, 2006, Plaintiffs belatedly filed their Amended Complaint.

In light of Plaintiffs' having filed their Amended Complaint, the motion for an indefinite extension of time is moot. Defendant Turcotte's motion to dismiss and for attorney's fees is denied, as it appears that the motion was based entirely on Plaintiffs' request for an indefinite delay in filing the Amended Complaint, and the Amended Complaint has now been filed.

Regarding Defendant Wilshire's Motion to Dismiss, Wilshire is correct in asserting that Plaintiffs improperly amended their Complaint as to allegations and parties other than Turcotte without seeking approval by the court or the opposing parties. The hearing held by the court on July 7, 2006 pertained only to Mr. Turcotte, and, logically, the court granted leave to file an Amended Complaint only as to Mr. Turcotte. The court did not grant leave to file an Amended Complaint as to other parties.

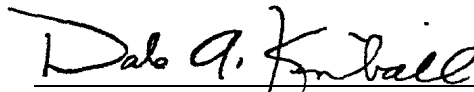
Accordingly, to the extent the Amended Complaint differs from the Original Complaint as to allegations and parties other than Turcotte, those allegations and/or causes of action are stricken. If Plaintiffs seek to amend their previous allegations and/or causes of action or to add additional parties, they must seek leave of court before doing so.

Accordingly, for good cause appearing, Plaintiffs' Ex Parte Motion for Extension of Time for Filing of Amended Complaint [docket # 21] is MOOT, Defendant Turcotte's Motion to Dismiss and for Fees [docket # 24] is DENIED; Defendant Wilshire Investments' Motion to Dismiss Amended Complaint [docket # 27] is GRANTED to the extent that any changes in the Amended Complaint pertaining to parties other than Turcotte are STRICKEN from the

Amended Complaint.

DATED this 6<sup>th</sup> day of December, 2006.

BY THE COURT:

A handwritten signature in black ink, reading "Dale A. Kimball". The signature is written in a cursive style with a large initial "D".

---

DALE A. KIMBALL

United States District Judge

---

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

v.

CONVERGYS CORPORATION,

Defendant.

ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFF'S MOTION  
FOR EXTENSION OF TIME

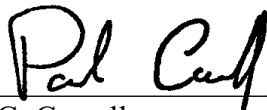
Case No. 2:05-cv-00814

Before the court is the Equal Employment Opportunity Commission's motion for extension of time to complete discovery (#48). For good cause appearing, the court GRANTS in part and DENIES in part the EEOC's motion to extend (#48). The parties will have until **April 30, 2007**, to complete discovery in this matter. Dispositive motions are due on **May 16, 2007**.

SO ORDERED.

DATED this 6th day of December, 2006.

BY THE COURT:



Paul G. Cassell  
United States District Judge



FILED  
U.S. DISTRICT COURT

2006 DEC -5 P 2:20 SO ORDERED

Peter M. de Jonge, (7185)  
Gordon K. Hill (9361)  
THORPE NORTH & WESTERN  
8180 South 700 East, Suite 350  
Sandy, UT 84070  
Telephone (801) 566-6633

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

*Dee Benson*

DEE BENSON  
United States District Judge

Mark M. Bettilyon (4798)  
Samuel C. Straight (7638)  
RAY, QUINNEY & NEBEKER P.C.  
36 South State Street, Suite 1400  
P.O. Box 45385  
Salt Lake City, Utah 84145-0385  
Telephone: (801) 532-1500

Date December 5, 2006

*Attorneys for Plaintiff Connor Sport Court International, Inc.*

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

CONNOR SPORT COURT INTERNATIONAL, )  
INC., a Delaware Corporation, )

Plaintiff, )

v. )

C&C ASSETS, INC., a Florida Corporation, dba )  
COURT TILE DISCOUNTERS and dba )  
GAMECOURTS.COM; JOSEPH PUOPOLO, an )  
individual and President of C&C Assets, Inc.; )  
PLAYMAKER, INC. a Virginia Corporation; )  
TRUESPORTS, INC. a Virginia Corporation; )  
WILLIAM BROWNLEY, an individual and )  
President of Playmaker, Inc. and Vice President of )  
TrueSports, Inc.; and MICHAEL PUOPOLO, an )  
individual and President of TrueSports, Inc. and )  
Vice President of Playmaker, Inc., )

Defendants. )

STIPULATED MOTION TO AMEND  
SCHEDULING ORDER

Civil No. 2:05-CV-00840 DB

The Honorable Dee Benson

The parties, by and through their counsel of record, hereby move the Court for an Order  
extending the deadlines currently set forth in the Court's Amended Scheduling Order dated June 15,

2006. The parties request the extension of time in order to facilitate ongoing settlement discussions. Only the deadlines for which the parties are seeking extension are set forth below. All other dates in Scheduling Order will remain unchanged. No trial date currently has been set for this matter, therefore these extensions will not require moving a trial date.

1. Rule 26(a)(2) Reports from Experts: (a) Plaintiff – February 16, 2007; (b) Defendants – March 16, 2007; and (c) Counter Reports – March 30, 2007.
2. Discovery deadlines (a) Fact Discovery – January 31, 2007; (b) Expert Discovery April 13, 2007.
3. Deadlines for filing dispositive or potentially dispositive motions – April 27, 2007.
4. Rule 26(a)(3) Pretrial Disclosures and Objections – Deadlines pursuant to Rule.

DATED: December 4, 2006

YOUNG ADAMS & HOFFMAN, LLP.

RAY, QUINNEY & NEBEKER P.C

/s/ Jeremy M. Hoffman  
Jeremy M. Hoffman  
*Attorney for Defendants*

*(Signed with Permission from Jeremy Hoffman)*

/s/ Samuel C. Straight  
Mark M. Bettilyon  
Samuel C. Straight

Peter M. de Jonge  
Gordon K. Hill  
THORPE NORTH & WESTERN LLP

*Attorneys for Plaintiff Connor Sport Court International, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 4th day of December, 2006, the foregoing  
STIPULATED MOTION TO AMEND SCHEDULING ORDER was filed with the Clerk of  
Court using the CM/ECF system which sent notification of such filing to the following:

Jeremy M. Hoffman  
YOUNG ADAMS & HOFFMAN, LLP  
170 South Main Street, Suite 1125  
Salt Lake City, Utah 84101-1639

/s/ Samuel C. Straight

902917

RECEIVED

FILED  
U.S. DISTRICT COURT

2006 DEC -6 A 11:18

OFFICE OF

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

BY: DEPUTY CLERK

THE WILDERNESS SOCIETY *et al.*,

Plaintiffs,

v.

KANE COUNTY, UTAH *et al.*,

Defendants.

Case No. 2:05cv854 TC (DON)

**ORDER**

**GRANTING  
PLAINTIFFS' UNOPPOSED MOTION TO  
FILE OVERLONG MEMORANDUM IN  
SUPPORT OF THEIR MOTION TO FIND  
DEFENDANTS' APPEAL FRIVOLOUS**

The Honorable Tena Campbell

Plaintiffs' UNOPPOSED MOTION TO FILE OVERLONG MEMORANDUM IN  
SUPPORT OF THEIR MOTION TO FIND DEFENDANTS' APPEAL FRIVOLOUS is hereby  
GRANTED.

Plaintiffs shall file a memorandum as described above of not to exceed 19 pages,  
exclusive of face sheet and tables of contents.

DATED Dec 5, 2006.

BY THE COURT

*Tena Campbell*

The Honorable Tena Campbell  
United States District Court Judge

---

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

SHERRY AMUNDSEN,

Plaintiff,

vs.

KRISTIN JONES, UTAH COUNTY  
SHERIFF'S OFFICE,

Defendants.

ORDER & MEMORANDUM DECISION

Case No. 2:05 CV 939

---

Plaintiff Sherry Amundsen filed this lawsuit under 42 U.S.C. § 1983, alleging that Defendants Kristin Jones, a deputy of the Utah County Sheriff's Office, and the Utah County Sheriff's Office<sup>1</sup> violated Ms. Amundsen's constitutional rights after her vehicle was stopped and she was subjected to field sobriety tests, an arrest on suspicion of driving under the influence, and additional toxicology testing post-arrest. On September 29, 2006, the court signed an Order & Memorandum Decision granting Defendant Utah County summary judgment on all claims and also granting Deputy Jones summary judgment on Ms. Amundsen's claim that she was wrongfully arrested. (See Order & Memorandum Decision (dkt. #24).) But the court declined to grant Deputy Jones summary judgment on Ms. Amundsen's allegations that Deputy Jones impermissibly expanded the scope of the traffic stop by performing field sobriety tests and her general allegation that the post-arrest testing was impermissible.

---

<sup>1</sup> Although Ms. Amundsen named the Utah County Sheriff's Office as a defendant, the parties agree that Utah County itself, rather than the Utah County Sheriff's Office, should be considered the proper defendant.

Now pending before the court are several motions filed after the entry of the Order & Memorandum Decision signed on September 29, 2006. Specifically, Defendants filed a Rule 59 Motion to Alter or Amend Order and Judgment, arguing that the court's order took an overly broad view of Ms. Amundsen's complaint and misapplied the qualified immunity standard. Defendants also request that the court strike a transcript of a Department of Motor Vehicles hearing that was submitted by Ms. Amundsen as part of her opposition to Defendants' motion for summary judgment. Ms. Amundsen, for her part, has requested leave to file an amended complaint. According to Ms. Amundsen, the amended complaint does not raise new claims, but merely spells out in more detail claims already present in the complaint now governing this case. Finally, Defendants have moved to vacate the trial setting and to strike the final pretrial conference currently scheduled for December 13, 2006. In support of that motion, Defendants note that several motions are currently pending and that the manner in which those motions are resolved could affect the parties' ability to proceed to trial.

*A. Motion to Alter or Amend*

A motion for rule 59(e) relief "should be granted only to correct manifest errors of law or to present newly discovered evidence." Adams v. Reliance Standard Life Ins. Co., 225 F.3d 1179, 1186 n.5 (10th Cir. 2000) (internal quotation omitted). Defendants do not contend that newly discovered evidence compels relief from the court's previous order. Rather, Defendants argue that an alteration or amendment of the previous order is warranted because the court committed manifest legal error.

Defendants motion to amend is largely based on Defendants' belief that the court's September 29, 2006 order read Ms. Amundsen's complaint too broadly and addressed claims not specifically raised by Ms. Amundsen. The court's previous order discussed the scope of Ms.

Amundsen's claims in some detail, concluding that those claims encompassed challenges to Deputy Jones's use of field sobriety tests as well as the post-arrest testing. (See id. at 12-13 & 17 n.3.) The arguments raised by Defendants in their motion to alter or amend concerning the scope of Ms. Amundsen's claims amount to nothing more than a disagreement with the court's ruling.

Similarly, in challenging the appropriateness of the court's qualified immunity analysis, Defendants do not raise any argument that meaningfully varies from that supplied in advance of the court's previous ruling. As with Defendants' arguments concerning the scope of Ms. Amundsen's claims, Defendants' position with respect to the court's qualified immunity analysis amounts to simple disagreement with the court's ruling on that issue. The court has considered the arguments raised by Defendants, but declines to alter or amend the previous order.<sup>2</sup>

*B. Motion to Strike*

Defendants filed a motion to strike a transcript from a DMV hearing that Ms. Amundsen submitted in support of her opposition to Defendants' motion for summary judgment. Defendants' motion to strike was filed over two weeks following the date that the court ruled on Defendants' motion for summary judgment. See Noblett v. Gen. Elec. Credit Corp., 400 F.2d 442, 445 (10th Cir. 1968) ("An affidavit that does not measure up to the standards of Rule 56(e) is subject to a motion to strike; and formal defects are waived in the absence of a motion or other objection."). In Defendants' reply to Ms. Amundsen's opposition to Defendants' summary judgment motion, Defendants referenced the hearing in question but did not challenge the admissibility of the hearing transcript. (See Reply Memo. in Supp. of Defs.' Mot. for Summ J. 6 (dkt. #20).)

---

<sup>2</sup>In their motion to alter or amend, Defendants argue that Ms. Amundsen's claim concerning the post-arrest testing must fail because she consented to the testing. This argument was not offered during the initial briefing of Defendants' motion for summary judgment and, as the record now stands, granting Defendants summary judgment on that claim would be inappropriate.

In any event, the court did not rely upon the contents of the hearing transcript in its order regarding Defendants' motion for summary judgment, but rather relied only upon the deposition transcripts and affidavits provided by counsel. Accordingly, even if the transcript was inadmissible, its presence in the record was harmless. Defendants' motion to strike the transcript is moot.

*C. Motion to Amend*

Ms. Amundsen requests permission to amend her complaint. According to Ms. Amundsen, the requested amendment does not add any additional claims, but merely "sharpen[s] up her theories of recovery." (Memo. of Law in Supp. of Plf.'s Mot. to Amend Her Compl. 3 (dkt. #32).) Defendants counter that the time for filing amended pleadings has passed and that Ms. Amundsen's motion must be denied.

Ms. Amundsen's motion is, indeed, untimely. The deadline for filing amended pleadings passed approximately seven months ago. Ms. Amundsen's desire to simply submit a more clear, or "sharper," complaint, is not a sufficient reason to allow an amendment at such a late date.<sup>3</sup> As stated by the Tenth Circuit:

Untimeliness in itself can be a sufficient reason to deny leave to amend, particularly when the movant provides no adequate explanation for the delay. "Where the party seeking the amendment knows or should have known of the facts upon which the proposed amendment is based but fails to include them in the original complaint, the motion to amend is subject to denial."

Panis v. Mission Hills Bank, N.A., 60 F.3d 1486, 1495 (10th Cir. 1995) (internal citation omitted) (quoting State Distributors, Inc. v. Glenmore Distilleries Co., 738 F.2d 405, 416 (10th Cir. 1984)). Accordingly, Ms. Amundsen's motion to amend is denied.

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<sup>3</sup>In her memorandum supporting her motion to amend, Ms. Amundsen herself indicates that an amendment is not necessary, stating that the "Court has had [sic] pointed to various references in Plaintiff's pleadings which seem to obviate the need to amend her complaint." (Memo of Law in Supp. of Plf.'s Mot. to Amend Her Compl. 3 (dkt. #32).)



*D. Motion to Vacate Trial Setting*

In large part, Defendants' motion to vacate the current trial setting was premised on the uncertainty surrounding the motions just discussed. Defendants also raise concerns about the propriety of continuing toward trial without the opportunity to reopen discovery to more fully investigate Ms. Amundsen's allegations concerning the permissibility of the field sobriety tests and post-arrest testing. And Defendants also indicate that, in the absence of an alteration or amendment of the court's previous order, they may pursue an interlocutory appeal.

Defendants do not specifically identify why additional discovery is warranted, and instead simply reassert their position that Ms. Amundsen never sufficiently pleaded claims relating to the scope of the traffic stop or post-arrest testing. As the record now stands, there is not sufficient reason to vacate the trial setting and Defendants' motion is therefore denied. Should Defendants decide to pursue an interlocutory appeal or file a specific request for the reopening of discovery, the court would entertain a motion to vacate the trial setting at that time.

**Conclusion**

For the foregoing reasons, Defendants' Rule 59 Motion to Alter or Amend Order and Judgment (dkt. #26) is DENIED. Defendants' Motion to Strike Transcript (dkt. #28) is DENIED as moot. Plaintiff's Motion to Amend Her Complaint (dkt. #31) is DENIED. Defendants' Motion to Vacate Trial Setting (dkt. #42-1) is DENIED.

SO ORDERED this 6th day of December, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

GERARDO AYASE-OSUNA, et al.,  
Defendants.

ORDER

Case No. 2:06-CR-6 TC

---

In this criminal conspiracy case, the deadline for filing motions to suppress is now passed. The court HEREBY SETS a STATUS CONFERENCE for **Tuesday, January 9, 2007, at 1:30 p.m.** to discuss the need for a James hearing and to set a trial date. All counsel for remaining defendants are required to attend. If you are not able to attend, please have one of your co-counsel appear on your and your client's behalf.

SO ORDERED this 6th day of December, 2006.

BY THE COURT:



TENA CAMPBELL  
United States District Judge

UNITED STATES DISTRICT COURT

Central

U.S. DISTRICT COURT  
District of

Utah

UNITED STATES OF AMERICA **FILED** **DEC -5 P 3:00** JUDGMENT IN A CRIMINAL CASE

V.

Linda M. Carson

DISTRICT OF UTAH

Case Number: DUTX206CR000065-001

BY: DEPUTY CLERK

USM Number: 13448-081

Henri Sisneros

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment.

☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §657	Embezzlement by Credit Union Officer or Employee		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

12/4/2006

Date of Imposition of Judgment

Signature of Judge

Dale A. Kimball

U.S. District Judge

Name of Judge

Title of Judge

Date

December 5, 2006

DEFENDANT: Linda M. Carson  
CASE NUMBER: DUTX206CR000065-001

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

15 months.

☒ The court makes the following recommendations to the Bureau of Prisons:

That the defendant be incarcerated in a federal facility as close to Utah as possible to facilitate family visitation.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ before 2 p.m. on 1/4/2007

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Linda M. Carson  
CASE NUMBER: DUTX206CR000065-001

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :  
60 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history, or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Linda M. Carson

CASE NUMBER: DUTX206CR000065-001

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall maintain full-time verifiable employment or participate in academic or vocational development throughout the term of supervision as deemed appropriate by the U. S. Probation Office.
2. The defendant is to inform any employer or prospective employer of her current conviction and supervision status.
3. The defendant shall refrain from incurring new credit charges or opening additional lines of credit unless she is in compliance with any established payment schedule and obtains the approval of the U. S. Probation Office.
4. The defendant shall provide the U. S. Probation Office access to all requested financial information.
5. The defendant shall abide by the following occupational restrictions:
  - A. The defendant is prohibited from participating in any manner in the affairs of any federally regulated financial institution.
  - B. The defendant shall not have direct or indirect control over the assets or funds of others.
6. The defendant shall submit to drug/alcohol testing as directed by the U. S. Probation Office, and pay a one-time \$115 fee to partially defray the costs of collection and testing.
7. The defendant shall participate in drug and/or alcohol abuse treatment under a copayment plan as directed by the probation office and shall not possess or consume alcohol during the course of treatment.

DEFENDANT: Linda M. Carson

CASE NUMBER: DUTX206CR000065-001

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 100.00	\$ 0.00	\$ 59,255.00

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
CUMIS Insurance Society, Inc.	\$59,255.00	\$59,255.00	
P.O. Box 1221			
Madison, WI 53701-1221			
Claim No. B0721014			

<b>TOTALS</b>	\$ <u>59,255.00</u>	\$ <u>59,255.00</u>
---------------	---------------------	---------------------

☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for the ☐ fine ☒ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Linda M. Carson  
CASE NUMBER: DUTX206CR000065-001

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 59,355.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:  
The Special Assessment Fee of \$100 is due immediately. The restitution shall be paid at a minimum rate of \$200.00 per month upon release from incarceration.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.



Pages 7 - 10

are the

Statement of Reasons,  
which will be docketed  
separately as a sealed  
document

UNITED STATES DISTRICT COURT

Central

U.S. DISTRICT COURT

District of

Utah

UNITED STATES OF AMERICA

2006 DEC -5 P 3:09

JUDGMENT IN A CRIMINAL CASE

V.

David Manriquez-Valencia

DISTRICT OF UTAH

BY: DEPUTY CLERK

Case Number: DUTX206CR000454-001

USM Number: 13741-081

Benjamin McMurray

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment.

☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8 U.S.C. §1326	Re-entry of Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

12/4/2006

Date of Imposition of Judgment

Signature of Judge

Dale A. Kimball

Name of Judge

U.S. District Judge

Title of Judge

Date

December 5, 2006

DEFENDANT: David Manriquez-Valencia  
CASE NUMBER: DUTX206CR000454-001

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

21 months.

☒ The court makes the following recommendations to the Bureau of Prisons:

That the defendant be incarcerated in a federal facility as close to Tucson, Arizona as possible to facilitate family visitation.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: David Manriquez-Valencia  
CASE NUMBER: DUTX206CR000454-001

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history, or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: David Manriquez-Valencia  
CASE NUMBER: DUTX206CR000454-001

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall not illegally re-enter the United States. In the event that the defendant should be released from confinement without being deported, he shall contact the United States Probation Office in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision after being deported, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: David Manriquez-Valencia

CASE NUMBER: DUTX206CR000454-001

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 100.00	\$ 0.00	\$ 0.00

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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<b>TOTALS</b>	\$ _____ 0.00	\$ _____ 0.00
---------------	---------------	---------------

☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: David Manriquez-Valencia  
CASE NUMBER: DUTX206CR000454-001

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10

are the

Statement of Reasons,  
which will be docketed  
separately as a sealed  
document



IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

FILED  
U.S. DISTRICT COURT

2006 DEC -5 P 2:20

DISTRICT OF UTAH

UNITED STATES OF AMERICA,  
Plaintiff,

-vs-

WADE TYLER WARR,  
Defendant.

BY: \_\_\_\_\_  
DEPUTY CLERK

ORDER TO CONTINUE JURY TRIAL

Case No. 2:06 CR 556 DB

Based on the motion filed by the defendant and good cause appearing,


IT IS HEREBY ORDERED:

The Jury Trial in the above case is continued and will be scheduled for the 5 day  
of FEBRUARY, 2007 at 1:30 a.m.

Pursuant to the Speedy Trial Act, 18 U.S.C. § 3161 et seq., the Court finds that the ends  
of justice served by a continuance in this case outweigh the best interest of the public and the  
Defendant in a speedy trial in order to afford counsel for the Defendants and the Government  
additional time in which to complete plea negotiations in an attempt to resolve the case short of  
trial.

DATED this 4 day of December, 2006.

BY THE COURT:

  
HONORABLE DEE BENSON, Chief  
United States District Court Judge

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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

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UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	Case No. 2:06CR-00571DAK
	:	
-vs-	:	
	:	ORDER
	:	
CHARLES E. HOPE, et al	:	
	:	
Defendant.	:	

---

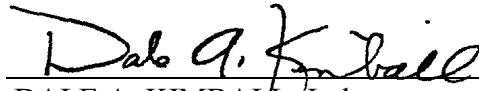
Based on a Motion to Suppress Evidence and Statements filed by defendants and good cause appearing,

**IT IS HEREBY ORDERED:**

1. The motion to suppress set in this case for December 6, 2007, is continued without date pending resolution of the issues raised in the Motion to Suppress.
2. In order to provide adequate preparation time, the opportunity for the taking of evidence and briefing and to promote continuity of counsel, pursuant to 18 U.S.C. 3161(h)(1)(F), the Court finds that the ends of justice served by a continuance of the suppression hearing referred to above in this case outweigh the best interests of the public and the defendant in a speedy trial. Therefore, the time between the date this order is signed and the date of the

Evidentiary Hearing that will be scheduled is excluded from computation for speedy trial purposes.

DATED this 6th day of December, 2006.

  
\_\_\_\_\_  
DALE A. KIMBALL, Judge  
United States District Court

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,	:	<a href="#">2:06 CR 617</a> PGC
Plaintiff,	:	
vs.	:	
	:	ORDER CONTINUING HEARING
GERALDO ANTONIO PLANELLS-	:	
GUERRA,	:	
Defendant.	:	

---

Based upon the government's Motion to Continue the Hearing and the facts set forth therein, the court finds good cause for a continuance.

WHEREAS the case agent for the Government is scheduled to undergo surgery near the current date of the Hearing on Defendant's Motion to Suppress;

And WHEREAS the interests of both parties will be served by allowing for additional time to prepare;

THEREFORE,

It is HEREBY ORDERED, that the motion to suppress in the above-captioned matter is continued to the 19<sup>th</sup> day of December, 2006 at 10:00 a.m. Further, the time between December 11, 2006 and the new hearing date set herein is hereby tolled for purposes

of the Speedy Trial Act.

DATED this 5<sup>th</sup> day of December 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell". The signature is written in a cursive, somewhat stylized font. The "P" is large and loops around the "a", and the "C" is also large and loops around the "a". The "s" is written in a simple, cursive style. The "e" and "l" are also cursive, with the "l" having a small loop at the top.

---

PAUL G. CASSELL  
United States District Court Judge

BRETT L. TOLMAN, United States Attorney, (#8821)  
LANA TAYLOR, Special Assistant United States Attorney (# 7642 )  
Attorneys for the United States of America  
348 East South Temple  
Salt Lake City, Utah 84111  
Telephone: (801) 524-4156

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

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UNITED STATES OF AMERICA,	: <b>ORDER TOLLING TIME UNDER THE</b>
	: <b>SPEEDY TRIAL ACT</b>
	:
Plaintiff,	:
	:
vs.	: Case No. <a href="#">2:06CR663</a> PGC
	:
ELEODORO BOJORQUEZ-LOPEZ,	:
LAMBERTO BOJORQUEZ-LOPEZ,	:
ORLANDO BORQUEZ-ALAPIZCO aka	:
ORLANDO BORQUEZ-ALAPIZO,	: Judge Paul G. Cassell
LUIS ALBERTO BOJORQUEZ-CASTRO	:
aka EFREN GONZALEZ-CASTRO,	:
MIGUEL ANGEL BOJORQUEZ-LOPEZ,	:
MARIA DEL ROSARIO TAVIZON-	:
GUZMAN and AIMEE JOHANNA HYDE,	:
	:
Defendants.	

---

On October 30, 2006, the parties appeared before the court for a Scheduling Conference. During this proceeding, the court extended the deadline for any motions filed by any party to November 28, 2006, because of the need to have the interviews with the defendants transcribed. A Motion to Suppress is scheduled for December 14, 2006 at 2:30 p.m., a Pretrial Conference on January 24, 2007, at 2:30 p.m. and a 4-day Jury Trial which is to commence on February 5, 2007.

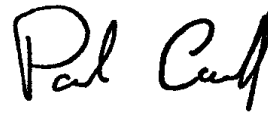
Therefore, because of the lengthy discovery, IT IS HEREBY ORDERED that time between

October 30, 2006 and February 5, 2007, is tolled under the Speedy Trial Act pursuant to [18 U.S.C. §3161\(h\)\(1\)\(F\)](#).

The Court specifically finds that the ends of justice will be served by the granting of such continuance and that such action outweighs the best interest of the public and the defendants in a speedy trial.

DATED this 6th day of December, 2006

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell". The signature is written in a cursive, flowing style.

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JUDGE PAUL G. CASSELL  
UNITED STATES DISTRICT COURT

# UNITED STATES DISTRICT COURT

FILED  
U.S. DISTRICT COURT

Central

District of

Utah

2006 DEC -5 P 2: 2

UNITED STATES OF AMERICA

## JUDGMENT IN A CRIMINAL CASE

V.

DISTRICT OF UTAH

Antonio Gonzalez-Rascon

Case Number: DUTX 2:06-cr-000689-001 BY:

DEPUTY CLERK

USM Number: 13960-081

Viviana Ramirez

Defendant's Attorney

### THE DEFENDANT:

☒ pleaded guilty to count(s) I-Indictment

☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8USC§1326	Reentry of Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

12/4/2006

Date of Imposition of Judgment

*Dee Benson*

Signature of Judge

Dee Benson

Name of Judge

U.S. District Judge

Title of Judge

12/5/2006

Date



DEFENDANT: Antonio Gonzalez-Rascon  
CASE NUMBER: DUTX 2:06-cr-000689-001

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

21 months.

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends that the defendant be placed in a Federal Correctional Institution in the Phoenix, AZ., area, for family visitations. Secondly the Court recommends a Federal Correctional Institution where the defendant can participate and completes the 500 hour drug re-hab program.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Antonio Gonzalez-Rascon  
CASE NUMBER: DUTX 2:06-cr-000689-001

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Antonio Gonzalez-Rascon  
CASE NUMBER: DUTX 2:06-cr-000689-001

### **SPECIAL CONDITIONS OF SUPERVISION**

1. The defendant shall not reenter the United States illegally. In the event that the defendant should be released from confinement without being deported, he shall contact the United States Probation Office in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision after being deported, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of his arrival in the United States.

DEFENDANT: Antonio Gonzalez-Rascon  
CASE NUMBER: DUTX 2:06-cr-000689-001

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ <u>0.00</u>	\$ <u>0.00</u>
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☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Antonio Gonzalez-Rascon  
CASE NUMBER: DUTX 2:06-cr-000689-001

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

NYAL C. BODILY, USB #9621  
Allan & Easton, LLC  
Attorney for Robert Matthews  
1892 N. 1120 W., Provo, UT 84604  
(801) 375-8800

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

UNITED STATES OF AMERICA,	*	
	*	
	*	
Plaintiff,	*	Case Number: 2:06-CR-714 PGC
	*	
vs.	*	
	*	
ROBERT MATTHEWS,	*	ORDER
	*	
Defendant.	*	
	*	

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THE COURT, having considered Defendant's Motion to Continue and the reasons for continuance contained therein, to wit:

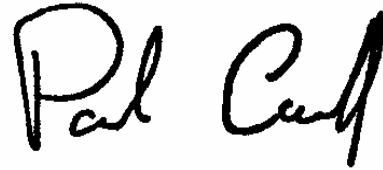
- 1) Defendant's motion is made pursuant to [18 U.S.C. §3161\(h\)](#).
- 2) Defendant requests a continuance because a failure to grant a continuance would deny counsel for Defendant the reasonable time necessary for effective preparation.
- 3) Specifically, Defendant requests additional time to allow completion of the forensic investigation of Defendant's computer and computer equipment seized from the Defendant. It is estimated that the results of the forensic investigation will be available in approximately 90 days.

The Court finds that the ends of justice to be served by granting Defendant's Motion to Continue outweigh the best interest of the public and the defendant in a speedy trial, for the reasons set forth above.

WHEREFORE, the Court hereby grants Defendant's Motion to Continue.

The Court further orders the parties to appear at a Review Hearing on the 16th day of March 2006 at 11:30 a.m. to review the status of discovery. The trial date of December 11, 2006 is STRICKEN.

DATED this 6th day of December, 2006.

A handwritten signature in black ink, appearing to read "Paul Cassell". The signature is written in a cursive, flowing style.

---

HONORABLE PAUL CASSELL  
United States District Court Judge

NYAL C. BODILY, USB #9621  
Allan & Easton, LLC  
Attorney for Robert Matthews  
1892 N. 1120 W., Provo, UT 84604  
(801) 375-8800

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

UNITED STATES OF AMERICA,	*	
	*	
	*	
Plaintiff,	*	Case Number: 2:06-CR-714 PGC
	*	
vs.	*	
	*	
ROBERT MATTHEWS,	*	AMENDED ORDER
	*	
Defendant.	*	
	*	

---

THE COURT, having considered Defendant's Motion to Continue and the reasons for continuance contained therein, to wit:

- 1) Defendant's motion is made pursuant to 18 U.S.C. §3161(h).
- 2) Defendant requests a continuance because a failure to grant a continuance would deny counsel for Defendant the reasonable time necessary for effective preparation.
- 3) Specifically, Defendant requests additional time to allow completion of the forensic investigation of Defendant's computer and computer equipment seized from the Defendant. It is estimated that the results of the forensic investigation will be available in approximately 90 days.

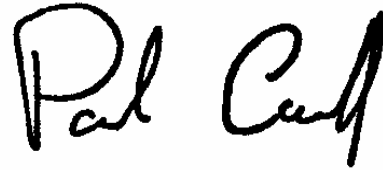


The Court finds that the ends of justice to be served by granting Defendant's Motion to Continue outweigh the best interest of the public and the defendant in a speedy trial, for the reasons set forth above.

WHEREFORE, the Court hereby grants Defendant's Motion to Continue.

The Court further orders the parties to appear at a Review Hearing on the 16th day of March 2007 at 11:30 a.m. to review the status of discovery. The trial date of December 11, 2006 is STRICKEN.

DATED this 6th day of December, 2006.

A handwritten signature in black ink, appearing to read "Paul Cassell". The signature is written in a cursive, flowing style.

---

HONORABLE PAUL CASSELL  
United States District Court Judge

**United States District Court  
for the District of Utah**

**Criminal Pretrial Instructions**

The prosecution has an open file policy.

Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

Counsel must have all exhibits premarked by the clerk for the district judge before trial.

If negotiations are not completed for a plea by the plea deadline, the case will be tried.

In cases assigned to Judge Cassell, counsel are directed to meet and confer about the possibility of a plea, and before the deadline report to chambers whether the matter will proceed to trial.

**FILED**

CLERK, U.S. DISTRICT COURT

December 6, 2006 (9:54am)

DISTRICT OF UTAH

# United States District Court

**CENTRAL DISTRICT OF UTAH**

UNITED STATES OF AMERICA

V.

**ORDER SETTING  
CONDITIONS OF RELEASE**

GROVER MARK SNEDEGER

Case Number: 2:06-CR-775 PGC

IT IS SO ORDERED that the release of the defendant is subject to the following conditions:

- (1) The defendant shall not commit any offense in violation of federal, state or local or tribal law while on release in this case.
- (2) The defendant shall immediately advise the court, defense counsel and the U.S. attorney in writing of any change in address and telephone number.
- (3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed

as directed. The defendant shall next appear at (if blank, to be notified)

PLACE

on

DATE AND TIME

**Release on Personal Recognizance or Unsecured Bond**

IT IS FURTHER ORDERED that the defendant be released provided that:

- (✓) (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.
- ( ) (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of

dollars (\$ )

in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

### Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community, it is FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

- ☐ (6) The defendant is placed in the custody of:  
(Name of person or organization)  
(Address)  
(City and state) (Tel.No.)

who agrees (a) to supervise the defendant in accordance with all the conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: \_\_\_\_\_  
Custodian or Proxy

☒ (7) The defendant shall:

- ☐ (a) maintain or actively seek employment.
- ☐ (b) maintain or commence an educational program.
- ☐ (c) abide by the following restrictions on his personal associations, place of abode, or travel:
  - ☐ (d) avoid all contact with the following named persons, who are considered either alleged victims or potential witnesses:
  - ☐ (e) report on a regular basis to the supervising officer as directed.
  - ☐ (f) comply with the following curfew:
  - ☒ (g) refrain from possessing a firearm, destructive device, or other dangerous weapon.
  - ☐ (h) refrain from excessive use of alcohol.
  - ☐ (i) refrain from any use or unlawful possession of a narcotic drug and other controlled substances defined in 21 U.S.C. § 802 unless prescribed by a licensed medical practitioner.
  - ☐ (j) undergo medical or psychiatric treatment and/or remain in an institution, as follows:
  - ☐ (k) execute a bond or an agreement to forfeit upon failing to appear as required, the following sum of money or designated property
  - ☐ (l) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described money:
  - ☐ (m) execute a bail bond with solvent sureties in the amount of \$
  - ☐ (n) return to custody each (week)day as of \_\_\_\_\_ o'clock after being released each (week)day as of \_\_\_\_\_ o'clock for employment, schooling or the following limited purpose(s):
  - ☐ (o) surrender any passport to
  - ☐ (p) obtain no passport
  - ☐ (q) the defendant will submit to drug/alcohol testing as directed by the pretrial office. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment, if deemed advisable by supervising officer.
  - ☐ (r) participate in a program of inpatient or outpatient substance abuse therapy and counseling if deemed advisable by the supervising officer.
  - ☐ (s) submit to an electronic monitoring program as directed by the supervising officer.
  - ☐ (t)

**Advice of Penalties and Sanctions**

TO THE DEFENDANT:

**YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:**

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a \$250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment and a \$250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony, you shall be fined not more than \$250,000 or imprisoned not more than two years, or both.
- (4) a misdemeanor, you shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in additions to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

**Acknowledgment of Defendant**

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.

  
Signature of Defendant

\_\_\_\_\_  
Address

\_\_\_\_\_  
City and State

\_\_\_\_\_  
Telephone

**Directions to the United States Marshal**

- ( ☒ ) The defendant is ORDERED released after processing.
- ( ☐ ) The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date: December 6, 2006

s/Brooke C. Wells

Signature of Judicial Officer

Magistrate Judge Brooke C. Wells

Name and Title of Judicial Officer

**United States District Court  
for the District of Utah**

**Criminal Pretrial Instructions**

The prosecution has an open file policy.

Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

Counsel must have all exhibits premarked by the clerk for the district judge before trial.

If negotiations are not completed for a plea by the plea deadline, the case will be tried.

In cases assigned to Judge Cassell, counsel are directed to meet and confer about the possibility of a plea, and before the deadline report to chambers whether the matter will proceed to trial.

**FILED**

CLERK, U.S. DISTRICT COURT

December 6, 2006 (9:47am)

DISTRICT COURT  
CENTRAL DISTRICT OF UTAH

# United States District Court

## CENTRAL DISTRICT OF UTAH

UNITED STATES OF AMERICA

v.

### ORDER SETTING CONDITIONS OF RELEASE

DAVID YADRON

Case Number: 2:06-CR-781 TS

IT IS SO ORDERED that the release of the defendant is subject to the following conditions:

- (1) The defendant shall not commit any offense in violation of federal, state or local or tribal law while on release in this case.
- (2) The defendant shall immediately advise the court, defense counsel and the U.S. attorney in writing of any change in address and telephone number.
- (3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed

as directed. The defendant shall next appear at (if blank, to be notified)

\_\_\_\_\_  
PLACE

on \_\_\_\_\_

\_\_\_\_\_  
DATE AND TIME

### Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

- (✓) (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.
- ( ) (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of

\_\_\_\_\_  
dollars (\$ ) \_\_\_\_\_

in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

### Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community, it is FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

- ☐ (6) The defendant is placed in the custody of:  
(Name of person or organization)  
(Address)  
(City and state) (Tel.No.)

who agrees (a) to supervise the defendant in accordance with all the conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: \_\_\_\_\_  
Custodian or Proxy

☒ (7) The defendant shall:

- ☒ (a) maintain or actively seek employment, at least ½ time employment.
- ☐ (b) maintain or commence an educational program.
- ☒ (c) abide by the following restrictions on his personal associations, place of abode, or travel:  
maintain residence at the address reported to PTS. No change without prior permission of PTS.
- ☐ (d) avoid all contact with the following named persons, who are considered either alleged victims or potential witnesses:
- ☒ (e) report on a regular basis to the supervising officer as directed.
- ☐ (f) comply with the following curfew:
- ☒ (g) refrain from possessing a firearm, destructive device, or other dangerous weapon.
- ☐ (h) refrain from excessive use of alcohol.
- ☐ (i) refrain from any use or unlawful possession of a narcotic drug and other controlled substances defined in 21 U.S.C. §802 unless prescribed by a licensed medical practitioner.
- ☐ (j) undergo medical or psychiatric treatment and/or remain in an institution, as follows:
- ☐ (k) execute a bond or an agreement to forfeit upon failing to appear as required, the following sum of money or designated property
- ☐ (l) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described money:
- ☐ (m) execute a bail bond with solvent sureties in the amount of \$
- ☐ (n) return to custody each (week)day as of \_\_\_\_\_ o'clock after being released each (week)day as of) \_\_\_\_\_ o'clock for employment, schooling or the following limited purpose(s):
- ☐ (o) surrender any passport to
- ☐ (p) obtain no passport
- ☐ (q) the defendant will submit to drug/alcohol testing as directed by the pretrial office. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment, if deemed advisable by supervising officer.
- ☐ (r) participate in a program of inpatient or outpatient substance abuse therapy and counseling if deemed advisable by the supervising officer.
- ☐ (s) submit to an electronic monitoring program as directed by the supervising officer.
- ☐ (t)



**Advice of Penalties and Sanctions**

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a \$250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment and a \$250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

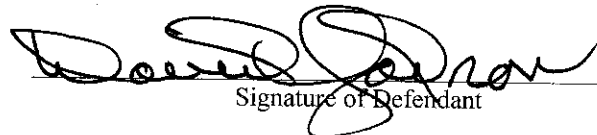
If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony, you shall be fined not more than \$250,000 or imprisoned not more than two years, or both.
- (4) a misdemeanor, you shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in addition to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

**Acknowledgment of Defendant**

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.

  
Signature of Defendant\_\_\_\_\_  
Address\_\_\_\_\_  
City and State\_\_\_\_\_  
Telephone**Directions to the United States Marshal**

- ( ☒ ) The defendant is ORDERED released after processing.
- ( ☐ ) The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date: December 6, 2006s/Brooke C. Wells  
Signature of Judicial OfficerMagistrate Judge Brooke C. Wells

Name and Title of Judicial Officer

## UNITED STATES DISTRICT COURT

DEC - 1 2006

CENTRAL DIVISION DISTRICT OF UTAH

MARKUS B. ZIMMER, CLERK  
BY \_\_\_\_\_  
DEPUTY CLERK

UNITED STATES OF AMERICA

V.

RICKY W. NUTALL

ORDER OF PROBATION  
UNDER 18 U.S.C. § 3607

CASE NUMBER: 2:06-CR-787

The defendant having been found guilty of an offense described in 21 U.S.C. 844, and it appearing that the defendant (1) has not, prior to the commission of such offense, been convicted of violating a federal or state law relating to controlled substances, and (2) has not previously been the subject of a disposition under this subsection,

**IT IS ORDERED** that the defendant is placed on probation as provided in 18 U.S.C. § 3607 for a period of twelve (12) months without a judgment of conviction first being entered. The defendant shall comply with the conditions of probation set forth on the next page of this Order, and the following special conditions:

The defendant:

- 1) Shall pay a fine in the amount of \$1,000 and a \$25 special assessment fee; +\$25 fee
- 2) Shall participate in a drug education and/or treatment program if ordered to do so by the supervising probation officer.
- 3) Shall undergo drug testing, including but not limited to urinalysis, if ordered to do so by the supervising probation officer.

Paul M. Warner  
Signature of Judge  
Paul M. Warner  
U.S. Magistrate Judge  
Name and Title of Judge

-----  
CONSENT OF THE DEFENDANT

I have read the proposed Order of Probation Under 18 U.S.C. § 3607 and the Conditions of Probation. I understand that if I violate any conditions of probation, the court may enter a judgment of conviction and proceed as provided by law. I consent to the entry of the Order.

I also understand that, if I have not violated any condition of my probation, the Court, without entering a judgment of conviction, (1) may dismiss the proceedings and discharge me from probation before the expiration of the term of probation, or (2) shall dismiss the proceedings and discharge me from probation at the expiration of the term of probation.

My date of birth is 6/5/53, and I am ☒ am not ☐ entitled to an expungement order as provided in 18 U.S.C. § 3607(c), if the proceedings are dismissed.

Ricky W. Nutall  
Signature of Defendant

1210 Riverside Dr. Provo UT  
Address of Defendant

\_\_\_\_\_  
Signature of Defense Counsel

\_\_\_\_\_  
Printed Name of Defense Counsel

11/30/06  
Date

## **CONDITIONS OF PROBATION**

While the defendant is on probation, the defendant:

- 1) shall not commit another federal, state or local crime.
- 2) shall not leave the judicial district without the permission of the court or probation officer;
- 3) shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 4) shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 5) shall support his or her dependents and meet other family responsibilities;
- 6) shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 7) shall notify the probation officer at least ten days prior to any change in residence or employment;
- 8) shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 9) shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 10) shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 11) shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 12) shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 13) shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 14) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement; and
- 15) shall not possess a firearm or destructive device.

## UNITED STATES DISTRICT COURT

DEC - 1 2006

CENTRAL DIVISION DISTRICT OF UTAH

MARKUS B. ZIMMER, CLERK  
BY ce  
DEPUTY CLERK

UNITED STATES OF AMERICA

V.

RYAN R. STONEHOCKER

ORDER OF PROBATION  
UNDER 18 U.S.C. § 3607

CASE NUMBER: 2:06-CR-791

The defendant having been found guilty of an offense described in 21 U.S.C. 844, and it appearing that the defendant (1) has not, prior to the commission of such offense, been convicted of violating a federal or state law relating to controlled substances, and (2) has not previously been the subject of a disposition under this subsection,

**IT IS ORDERED** that the defendant is placed on probation as provided in 18 U.S.C. § 3607 for a period of twelve (12) months without a judgment of conviction first being entered. The defendant shall comply with the conditions of probation set forth on the next page of this Order, and the following special conditions:

The defendant:

- 1) Shall pay a fine in the amount of \$1,000 and a \$25 special assessment fee; +\$25 Fee.
- 2) Shall participate in a drug education and/or treatment program if ordered to do so by the supervising probation officer.
- 3) Shall undergo drug testing, including but not limited to urinalysis, if ordered to do so by the supervising probation officer.

Paul M. Warner  
Signature of Judge  
Paul M. Warner  
U.S. Magistrate Judge  
Name and Title of Judge

-----  
CONSENT OF THE DEFENDANT

I have read the proposed Order of Probation Under 18 U.S.C. § 3607 and the Conditions of Probation. I understand that if I violate any conditions of probation, the court may enter a judgment of conviction and proceed as provided by law. I consent to the entry of the Order.

I also understand that, if I have not violated any condition of my probation, the Court, without entering a judgment of conviction, (1) may dismiss the proceedings and discharge me from probation before the expiration of the term of probation, or (2) shall dismiss the proceedings and discharge me from probation at the expiration of the term of probation.

My date of birth is 04/15/1987, and I am ☒ am not ☐ entitled to an expungement order as provided in 18 U.S.C. § 3607(c), if the proceedings are dismissed.

Ryan R. Stonehocker  
Signature of Defendant

3234 Morgan Drive  
Address of Defendant

\_\_\_\_\_  
Signature of Defense Counsel

\_\_\_\_\_  
Printed Name of Defense Counsel

11/30/2006  
Date

## **CONDITIONS OF PROBATION**

While the defendant is on probation, the defendant:

- 1) shall not commit another federal, state or local crime.
- 2) shall not leave the judicial district without the permission of the court or probation officer;
- 3) shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 4) shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 5) shall support his or her dependents and meet other family responsibilities;
- 6) shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 7) shall notify the probation officer at least ten days prior to any change in residence or employment;
- 8) shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 9) shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 10) shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 11) shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 12) shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 13) shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 14) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement; and
- 15) shall not possess a firearm or destructive device.

## UNITED STATES DISTRICT COURT

DEC - 1 2006

CENTRAL DIVISION DISTRICT OF UTAH

MARKUS B. ZIMMER, CLERK  
BY ce  
DEPUTY CLERK

UNITED STATES OF AMERICA

V.

ZACHARY D. MCCRAY

ORDER OF PROBATION  
UNDER 18 U.S.C. § 3607

CASE NUMBER: 2:06-CR-792

The defendant having been found guilty of an offense described in 21 U.S.C. 844, and it appearing that the defendant (1) has not, prior to the commission of such offense, been convicted of violating a federal or state law relating to controlled substances, and (2) has not previously been the subject of a disposition under this subsection,

**IT IS ORDERED** that the defendant is placed on probation as provided in 18 U.S.C. § 3607 for a period of twelve (12) months without a judgment of conviction first being entered. The defendant shall comply with the conditions of probation set forth on the next page of this Order, and the following special conditions:

The defendant:

- 1) Shall pay a fine in the amount of \$1,000 and a \$25 special assessment fee; +\$25 Fee.
- 2) Shall participate in a drug education and/or treatment program if ordered to do so by the supervising probation officer.
- 3) Shall undergo drug testing, including but not limited to urinalysis, if ordered to do so by the supervising probation officer.

Signature of Judge

Name and Title of Judge

-----  
CONSENT OF THE DEFENDANT

I have read the proposed Order of Probation Under 18 U.S.C. § 3607 and the Conditions of Probation. I understand that if I violate any conditions of probation, the court may enter a judgment of conviction and proceed as provided by law. I consent to the entry of the Order.

I also understand that, if I have not violated any condition of my probation, the Court, without entering a judgment of conviction, (1) may dismiss the proceedings and discharge me from probation before the expiration of the term of probation, or (2) shall dismiss the proceedings and discharge me from probation at the expiration of the term of probation.

My date of birth is 11/11/1987, and I am ☒ am not ☐ entitled to an expungement order as provided in 18 U.S.C. § 3607(c), if the proceedings are dismissed.

Signature of Defendant

Address of Defendant

Signature of Defense Counsel

Printed Name of Defense Counsel

Date

11/30/2006

## **CONDITIONS OF PROBATION**

While the defendant is on probation, the defendant:

- 1) shall not commit another federal, state or local crime.
- 2) shall not leave the judicial district without the permission of the court or probation officer;
- 3) shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 4) shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 5) shall support his or her dependents and meet other family responsibilities;
- 6) shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 7) shall notify the probation officer at least ten days prior to any change in residence or employment;
- 8) shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 9) shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 10) shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 11) shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 12) shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 13) shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 14) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement; and
- 15) shall not possess a firearm or destructive device.

**United States District Court  
for the District of Utah**

**Criminal Pretrial Instructions**

The prosecution has an open file policy.

Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

Counsel must have all exhibits premarked by the clerk for the district judge before trial.

If negotiations are not completed for a plea by the plea deadline, the case will be tried.

In cases assigned to Judge Cassell, counsel are directed to meet and confer about the possibility of a plea, and before the deadline report to chambers whether the matter will proceed to trial.



**United States District Court**

United States Courthouse  
Salt Lake City, Utah 84101

**Dee Benson**  
*United States District Chief Judge*

**FILED**  
**U.S. DISTRICT COURT**

801-524-6160

**2006 DEC -6 A 11: 23**

**DISTRICT OF UTAH**

BY: \_\_\_\_\_  
**DEPUTY CLERK**

**MEMORANDUM**

**TO:** Markus Zimmer  
Clerk of Court

**FROM:** Dee Benson  
U.S. District Chief Judge

**DATE:** December 5, 2006

**SUBJECT:** 2:06cr811 DB USA v. Thomas James Zajac

I find that I must recuse myself from this case.

Would you please see that this case is reassigned to another judge pursuant to our computer program.

Dee Benson



Chief Judge

Judge Dale A. Kimball  
DECK TYPE: Criminal  
DATE STAMP: 12/06/2006 @ 11:49:18  
CASE NUMBER: 2:06CR00811 DAK

**FILED**

CLERK, U.S. DISTRICT COURT

December 6, 2006 (10:09am)

DISTRICT COURT UTAH

# United States District Court

**CENTRAL DISTRICT OF UTAH**

UNITED STATES OF AMERICA  
v.

**ORDER SETTING  
CONDITIONS OF RELEASE**

MANUEL ESTRADA-MARIN

Case Number: 2:06-CR-812 PGC

IT IS SO ORDERED that the release of the defendant is subject to the following conditions:

- (1) The defendant shall not commit any offense in violation of federal, state or local or tribal law while on release in this case.
- (2) The defendant shall immediately advise the court, defense counsel and the U.S. attorney in writing of any change in address and telephone number.
- (3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed

as directed. The defendant shall next appear at (if blank, to be notified)

PLACE

on

DATE AND TIME

**Release on Personal Recognizance or Unsecured Bond**

IT IS FURTHER ORDERED that the defendant be released provided that:

- (✓) (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.
- ( ) (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of

dollars (\$ )

in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

### Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community, it is FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

- ☐ (6) The defendant is placed in the custody of:  
(Name of person or organization)  
(Address)  
(City and state) (Tel.No.)

who agrees (a) to supervise the defendant in accordance with all the conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: \_\_\_\_\_  
Custodian or Proxy

- ☒ (7) The defendant shall:
- ☒ (a) maintain or actively seek employment.
  - ☐ (b) maintain or commence an educational program.
  - ☒ (c) abide by the following restrictions on his personal associations, place of abode, or travel:  
maintain residence at the address reported to PTS. No change without prior permission of PTS.
  - ☒ (d) avoid all contact with the persons, who are considered co-defendant(s) with the exception of the defendant's spouse and sister-in-law, alleged victims or potential witnesses.
  - ☒ (e) report on a regular basis to the supervising officer as directed.
  - ☐ (f) comply with the following curfew:
  - ☒ (g) refrain from possessing a firearm, destructive device, or other dangerous weapon.
  - ☐ (h) refrain from excessive use of alcohol.
  - ☐ (i) refrain from any use or unlawful possession of a narcotic drug and other controlled substances defined in 21 U.S.C. §802 unless prescribed by a licensed medical practitioner.
  - ☐ (j) undergo medical or psychiatric treatment and/or remain in an institution, as follows:
  - ☐ (k) execute a bond or an agreement to forfeit upon failing to appear as required, the following sum of money or designated property
  - ☐ (l) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described money:
  - ☐ (m) execute a bail bond with solvent sureties in the amount of \$
  - ☐ (n) return to custody each (week)day as of \_\_\_\_\_ o'clock after being released each (week)day as of \_\_\_\_\_ o'clock for employment, schooling or the following limited purpose(s):
  - ☐ (o) surrender any passport to
  - ☐ (p) obtain no passport
  - ☐ (q) the defendant will submit to drug/alcohol testing as directed by the pretrial office. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment, if deemed advisable by supervising officer.
  - ☐ (r) participate in a program of inpatient or outpatient substance abuse therapy and counseling if deemed advisable by the supervising officer.
  - ☐ (s) submit to an electronic monitoring program as directed by the supervising officer.
  - ☒ (t) no travel outside the District of Utah.

**Advice of Penalties and Sanctions**

TO THE DEFENDANT:

**YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:**

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a \$250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment and a \$250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

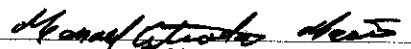
If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony, you shall be fined not more than \$250,000 or imprisoned not more than two years, or both.
- (4) a misdemeanor, you shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in additions to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

**Acknowledgment of Defendant**

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.



Signature of Defendant

Address

City and State

Telephone

**Directions to the United States Marshal**

- ( ) The defendant is ORDERED released after processing.
- ( ) The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judicial officer that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judicial officer at the time and place specified, if still in custody.

Date: December 6, 2006s/Brooke C. Wells

Signature of Judicial Officer

Magistrate Judge Brooke C. Wells

Name and Title of Judicial Officer

**United States District Court  
for the District of Utah**

**Criminal Pretrial Instructions**

The prosecution has an open file policy.

Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

Counsel must have all exhibits premarked by the clerk for the district judge before trial.

If negotiations are not completed for a plea by the plea deadline, the case will be tried.

In cases assigned to Judge Cassell, counsel are directed to meet and confer about the possibility of a plea, and before the deadline report to chambers whether the matter will proceed to trial.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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AARON HELBACH,	)	
	)	
Petitioner,	)	Case No. 2:06-CV-89 TS
	)	
v.	)	District Judge Ted Stewart
	)	
STATE OF UTAH et al.,	)	<b>ORDER</b>
	)	
Respondents.	)	Magistrate Judge David Nuffer

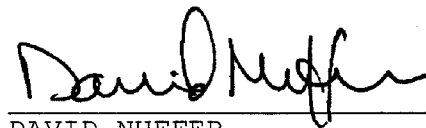
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The Court ordered the Utah Attorney General's Office (AG) to respond to Helbach's petition by October 13, 2006. However, the court clerk's office apparently inadvertently failed to send that order, along with a copy of the petition, to the AG. The Court therefore extends the time for response.

IT IS HEREBY ORDERED that, by January 18, 2007, the AG must respond to the petition. The Court Clerk shall transmit a copy of this order and the petition to the AG.

DATED this 6th day of December, 2006.

BY THE COURT:



DAVID NUFFER  
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

CONSENT TO COLLECTION OF FEES FROM INMATE TRUST ACCOUNT

I, Ronald Morello (Case No. 2:06-CV-848 PGC), understand that even when the Court grants my application to proceed *in forma pauperis* and files my complaint, I must still eventually pay the entire filing fee of \$350.00. I understand that I must pay the complete filing fee even if my complaint is dismissed.

I further consent for the appropriate institutional officials to collect from my account on a continuing basis each month, an amount equal to 20% of each month's income. Each time the amount in the account reaches \$10, the Trust Officer shall forward the interim payment to the Clerk's Office, U.S. District Court for the District of Utah, 350 South Main, #150, Salt Lake City, UT 84101, until such time as the \$350.00 filing fee is paid in full.

By executing this document, I also authorize collection on a continuing basis of any additional fees, costs, and sanctions imposed by the District Court.

---

Signature of Inmate  
Ronald Morello

SNELL & WILMER L.L.P.  
Todd M. Shaughnessy (6651)  
15 West South Temple  
Gateway Tower West  
Salt Lake City, Utah 84101-1004  
Telephone: (801) 257-1900  
Facsimile: (801) 257-1800  
*tshaughnessy@swlaw.com*

HOGAN & HARTSON L.L.P.  
Morris Waisbrot (admitted pro hac vice)  
William F. Haigney (admitted pro hac vice)  
Mitchell S. Feller (admitted pro hac vice)  
875 Third Avenue  
New York, NY 10022  
Telephone: (212) 918-3000  
Facsimile: (212) 918-3100

*Attorneys for Defendant*  
*International Business Machines Corporation*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

INTERNATIONAL AUTOMATED  
SYSTEMS, INC.,

Plaintiff-Counterclaim Defendant,

v.

IBM; IBM CORPORATION; IBM  
PERSONAL COMPUTING DIVISION;

Defendants-Counterclaimants,

LENOVO (UNITED STATES) INC.;  
LENOVO GROUP LTD; UPEK, INC. and  
JOHN DOES 1-20,

Defendants.

**ORDER STAYING CLAIMS AGAINST  
DEFENDANTS' INTERNATIONAL  
BUSINESS MACHINES AND LENOVO  
(UNITED STATES) INC. AND THEIR  
RESPECTIVE AFFILIATES,  
SUBSIDIARIES, AND BUSINESS UNITS**

Honorable Bruce S. Jenkins

Case No. 2:06-cv-00115-BSJ

RECEIVED  
ALL 11 7 2006  
FILED  
U.S. DISTRICT COURT  
2006 DEC -6 A 10: 06  
DISTRICT OF UTAH  
BY: DEPUTY CLERK  
OFFICE OF U.S. DISTRICT JUDGE  
BRUCE S. JENKINS



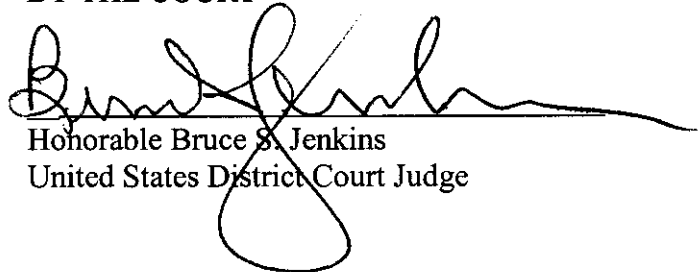
Defendant International Business Machines Corporation ("IBM") and Defendant Lenovo (United States) Inc. ("Lenovo") moved the Court for an order staying the claims against them until final resolution of the claims between Plaintiff and Defendant UPEK, Inc. ("UPEK"). That motion came before the Court for hearing on July 20, 2006. Darryl M. Woo appeared on behalf of Plaintiff; Jeffrey A. Miller appeared on behalf of UPEK; James G. Snell appeared on behalf of Lenovo; and William F. Haigney appeared on behalf of IBM.

Having reviewed the parties' written submissions, having heard the arguments of counsel and being fully advised, and for good cause appearing,

IT IS HEREBY ORDERED that all claims by and between Plaintiff, on the one hand, and IBM, Lenovo, and their respective affiliates, subsidiaries, and business units, on the other hand, be and hereby are stayed. These claims shall remain stayed until final resolution of the claims between Plaintiff and Defendant UPEK or until entry of a further written order of the Court.

DATED this 7<sup>th</sup> day of Dec, 2006.

BY THE COURT

  
Honorable Bruce S. Jenkins  
United States District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of August, 2006, a true and correct copy of the foregoing was delivered by U.S. Mail, postage prepaid, to the following:

J. David Nelson  
Robert D. Dahle  
Nelson Snuffer Dahle & Poulsen  
10885 South State Street  
Sandy, Utah 84070


Darryl M. Woo  
Fenwick & West LLP  
275 Battery Street, #16  
San Francisco, CA 94111

Max D. Wheeler  
Joseph P. Barrett  
P. Matthew Cox  
Snow Christensen & Martineau  
10 Exchange Place, Eleventh Floor  
P.O. Box 45000  
Salt Lake City, Utah 84145

Larry R. Laycock  
Robyn L. Phillips  
Workman Nydegger  
1000 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111

Gerald Chan  
Jim Snell  
Richard S. Taffet  
Bingham McCutchen LLP  
1900 University Avenue  
East Palo Alto, CA 94303-2223

Jeffrey A. Miller  
Jill Zimmerman  
Orrick Herrington & Sutcliffe (Menlo Park)  
1000 Marsh Road  
Menlo Park, CA 94025



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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

---

JOSEPH R. LONG,

Plaintiff,

vs.

JO ANNE B. BARNHART,  
Commissioner of the Social  
Security Administration

Defendant.

SCHEDULING ORDER

Civil No. 2:06CV0134 DAK

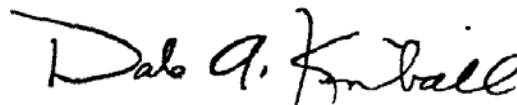
Judge Dale A. Kimball

The court revises the scheduling order as follows in the above captioned case:

1. Plaintiff may file a reply memorandum by January 5, 2007.

DATED this 6<sup>th</sup> day of December, 2006.

BY THE COURT

A handwritten signature in black ink, reading "Dale A. Kimball", written over a horizontal line.

Honorable Dale A. Kimball

---

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

REBA D. JENKINS,  
Plaintiff,

vs.

JO ANNE B. BARNHART, Commissioner of  
the Social Security Administration,  
Defendant.

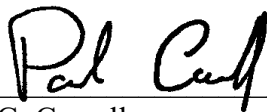
ORDER GRANTING EXTENSION  
OF TIME TO REPLY

Case No. 2:06-cv-00163

The plaintiff, Reba Jenkins, filed an unopposed motion requesting an extension of time to file a reply in support of her motion to reverse or remand the Commissioner's decision. The court GRANTS this motion [#12]. Ms. Jenkins has until January 12, 2007, in which to file a reply memorandum. When seeking future extensions, counsel is reminded to explain the cause, as required by the rules.<sup>1</sup>

DATED this 6th day of December, 2006.

BY THE COURT:



Paul G. Cassell  
United States District Judge

---

<sup>1</sup>See Fed. R. Civ. P. 6(b); D.U. Civ. 7-1(b)(1).

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

LARRY ALLEN VIGIL,	)	
	)	
Plaintiff,	)	Case No. 2:06-CV-164 DAK
	)	
v.	)	District Judge Dale Kimball
	)	
SHERIFF KENNARD et al.,	)	<b>O R D E R</b>
	)	
Defendants.	)	Magistrate Judge David Nuffer

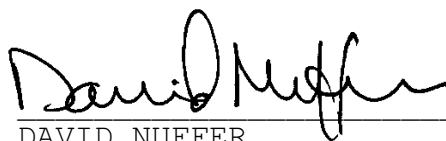
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Plaintiff, Larry Allen Vigil, filed a *pro se* prisoner civil rights complaint. He moved for time extensions in which to file an amended complaint and serve process upon the defendants. He then moved the Court to order the marshal's office to serve his complaint.

IT IS ORDERED that Plaintiff's motions for time extensions are denied as moot. (See File Entry #s 7 & 9.) The time for which Plaintiff asked has already passed without him filing an amended complaint or serving process. And, now, in any case, Plaintiff asks the Court to have the marshal's office serve the complaint. The Court will act on this latter motion for service of process at its earliest opportunity, upon further screening of the complaint.

DATED this 6th day of December, 2006.

BY THE COURT:



DAVID NUFFER  
United States Magistrate Judge

SOUTHERN UTAH WILDERNESS ALLIANCE, *et al.*,  
Plaintiffs,  
vs.  
THE UNITED STATES DEPARTMENT OF THE  
INTERIOR, *et al.*,  
Defendants,  
and  
ENDURING RESOURCES, LLC, *et al.*,  
Defendant-Intervenors.

Dale A. Kimball  
The Honorable Dale A. Kimball

United States District Court Judge



IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

DIANE M. FRITZ,	)	
	)	
Plaintiff,	)	Case No. 2:06-CV-353 DB
	)	
v.	)	District Judge Dee Benson
	)	
DR. K. JEPPSON,	)	<b>O R D E R</b>
	)	
Defendant.	)	Magistrate Judge David Nuffer

---

Plaintiff, inmate Diane M. Fritz, has filed a *pro se* civil rights complaint.<sup>1</sup> Plaintiff's application to proceed *in forma pauperis* has been granted. Plaintiff now moves for appointed counsel and production of documents.

The Court first denies Plaintiff's motion for service of process. This motion is unnecessary because Plaintiff is proceeding *in forma pauperis*.<sup>2</sup> In such cases, "[t]he officers of the court shall issue and serve all process, and perform all duties in such cases."<sup>3</sup> The Court will fully screen Plaintiff's amended complaint at its earliest opportunity and determine whether to dismiss it or order it to be served upon Defendants.<sup>4</sup> Plaintiff need do nothing to trigger this process.

---

<sup>1</sup>See [42 U.S.C.S. § 1983 \(2006\)](#).

<sup>2</sup>See 28 *id.* § 1915.

<sup>3</sup>See *id.* § 1915(d).

<sup>4</sup>See *id.* § 1915A.

Also, because Plaintiff's complaint has not yet been fully screened or served upon Defendants, Plaintiff's other motion for discovery is premature. The Court therefore denies it.

IT IS HEREBY ORDERED that:

(1) Plaintiff's motion for service of process is denied (see File Entry # 7); however, if, after the case is fully screened, it appears that this case has merit and states a claim upon which relief may be granted, the Court will order service of process.

(2) Plaintiff's motion for discovery is denied as premature. (See File Entry # 4.) Should the complaint survive full screening, this request may be renewed.

DATED this 6th day of December, 2006.

BY THE COURT:

  
\_\_\_\_\_  
DAVID NUFFER  
United States Magistrate Judge

FILED  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

2006 DEC -6 A 11:19  
DISTRICT OF UTAH  
BY: DEPUTY CLERK

ANGELA FREIBAUM and DAVID  
FREIBAUM,

Plaintiffs,

vs.

JOHN DOE,

Defendant.

ORDER OF REFERENCE

Civil No. 2:06 CV 443 TC

IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(A) and the rules of this court, the above entitled case is referred to United States Chief Magistrate Judge Samuel Alba. Judge Alba is directed to hear and determine any nondispositive matters pending before the court.

DATED this 6th day of December, 2006.

BY THE COURT:

*Tena Campbell*

TENA CAMPBELL  
United States District Judge

FILED  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
2006 DEC -6 AM 11:19

CENTRAL DIVISION

DISTRICT OF UTAH

---

CALVIN PAUL STEWART,	)	BY: <u>DEPUTY CLERK</u>
	)	
Petitioner,	)	Case No. 2:06-CV-464 TC
	)	
v.	)	District Judge Tena Campbell
	)	
LOWELL CLARK,	)	O R D E R
	)	
Respondent.	)	Magistrate Judge Samuel Alba

---

Petitioner, Calvin Paul Stewart, requests habeas corpus relief.<sup>1</sup> Because it appears Petitioner has filed his petition past the applicable period of limitation, the Court orders Petitioner to show cause why his petition should not be denied.

Petitioner's state conviction became final on November 23, 2003, which is the deadline he missed for filing an appeal. On that date, the one-year period of limitation began running on Petitioner's right to bring a federal habeas petition. Even so, Petitioner waited until June 6, 2006, to file his current petition.

Still, by statute, the one-year period of limitation is tolled for "[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending."<sup>2</sup> Meanwhile,

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<sup>1</sup>See 28 U.S.C.S. § 2254 (2006).

<sup>2</sup>Id. § 2244(d)(2).

equitable tolling is also available but "'only in rare and exceptional circumstances.'"<sup>3</sup>

Regarding statutory tolling, Petitioner states he filed a motion for post-conviction relief in state court on March 16, 2005, and another on July 6, 2005. Because these petitions were filed over three months past the one-year period of limitation--which, based on the information in the petition, expired around November 23, 2004--they did not toll the federal period of limitation. Thus, when Petitioner filed his current federal habeas petition on June 9, 2006, the period of limitation had already run out.

Petitioner possibly excuses his failure to timely file his petition by asserting a variety of due process violations in the state courts regarding his post-conviction petitions there. However, any such arguments are irrelevant, considering the period of limitation passed before those alleged violations occurred. Petitioner has not suggested any other grounds to support equitable tolling in this case.

Accordingly, the current petition before the Court was apparently filed past the one-year period of limitation. And, it

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<sup>3</sup>Stanley v. McKune, No. 05-3100, 2005 U.S. App. LEXIS 9872, at \*4 (10th Cir. May 23, 2005) (quoting Gibson v. Klinger, 232 F.3d 799, 808 (10th Cir. 2000)).

appears neither statutory exceptions nor equitable tolling apply to save Petitioner from the period of limitation's operation.

Petitioner raises an issue in his petition that bears more specific comment: He argues that he has been denied legal access in prison because there is no law library nor attorney to help him and because the prison took away most of his legal materials, all hindering his pursuit of his state habeas case. This conditions-of-confinement claim is improper in a habeas corpus petition and should instead be brought in a civil rights complaint in a new case.<sup>4</sup> Further, if Petitioner's assertion that he lacks legal counsel is meant as a habeas claim, it is not well taken. After all, "[t]here is no constitutional right to an attorney in state post-conviction proceedings."<sup>5</sup> Petitioner's legal access claim is thus dismissed.

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<sup>4</sup>See 42 U.S.C.S. § 1983 (2006).

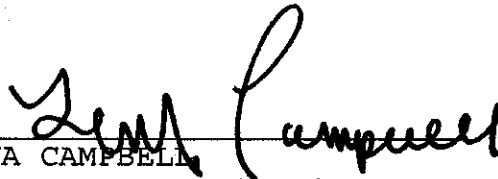
<sup>5</sup>Thomas v. Gibson, 218 F.3d 1213, 1222 (10th Cir. 2000) (quoting Coleman v. Thompson, 501 U.S. 722, 752, 111 S. Ct. 2546, 2566 (1991) (citation omitted)).

IT IS ORDERED that Petitioner must within thirty days show cause why his petition should not be denied because it is barred by the applicable period of limitation.

IT IS FURTHER ORDERED that Petitioner's legal-access claim is dismissed.

DATED this 5 day of December, 2006.

BY THE COURT:

  
TENA CAMPBELL  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

CALVIN PAUL STEWART,	)	
	)	
Petitioner,	)	Case No. 2:06-CV-465 TS
	)	
v.	)	District Judge Ted Stewart
	)	
LOWELL CLARK,	)	<b>ORDER</b>
	)	
Respondent.	)	Magistrate Judge Paul Warner

---

Petitioner, Calvin Paul Stewart, an inmate at Central Utah Correctional Facility, filed a habeas corpus petition.<sup>1</sup>

Petitioner attacks a state-court judgment apparently entered August 14, 2003. He states that he appealed that judgment to the Utah Court of Appeals, but says the case number, date of result, case citation, and grounds raised are all "unknown." The Court is thus unable to tell whether the current petition is timely.<sup>2</sup>

IT IS THEREFORE ORDERED that Petitioner must within thirty days submit to the Court a letter detailing the dates upon which

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<sup>1</sup>See 28 U.S.C.S. § 2254 (2006).

<sup>2</sup>See *id.* § 2244(d).



Petitioner's state appeal was filed and decided and the result reached, as well as a statement as to the current status of his two state post-conviction applications.

DATED this 1st day of December, 2006.

BY THE COURT:

A handwritten signature in cursive script, reading "Paul M. Warner", written in dark ink. The signature is fluid and stylized, with the first letters of each word being capitalized and prominent.

---

PAUL M. WARNER  
United States Magistrate Judge

---

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

MARBLE POINT ENERGY LTD, a Canadian  
corporation,

Plaintiff,  
vs.

MAJESTIC CAPITAL GROUP, LLC, a Utah  
Limited Liability Company, et al.,

Defendants.

**ORDER EXTENDING TIME TO RESPOND  
TO PLAINTIFF'S MOTION TO COMPEL**

Case No. 2:06cv00487 PGC

This matter is before the court on a Stipulated Motion for Extension of Time to File an Opposition to Plaintiff's Motion to Compel. Based on the parties' representation that they are finalizing the details of a settlement agreement which may make it unnecessary for Marble Point Energy to pursue its motion to compel, the court GRANTS the motion [#86].

The defendants shall have until January 8, 2007, to respond to Marble Point's motion to compel. The parties should note that due to concerns of judicial efficiency and timeliness, the

court will be hesitant to grant further extensions on this matter.

DATED this 6th day of December, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell", is written over a horizontal line.

Honorable Paul G. Cassell  
United States District Judge

FILED  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE

2006 DEC -6 A 11: 18

DISTRICT OF UTAH

DISTRICT OF UTAH

CENTRAL DIVISION

BY: DEPUTY CLERK

UNITED STATES OF AMERICA, )

Plaintiff, )

v. )

DAVID L. BEAGLEY;  
ROBERTA A. BEAGLEY;  
DESERET FEDERAL SAVINGS AND  
LOAN ASSOCIATION; UTAH  
COMMUNITY CREDIT UNION; and  
UTAH TAX COMMISSION, )

Defendants. )

Case No. 2:06cv00656TC

**ORDER DIRECTING DESERET  
FEDERAL SAVINGS AND LOAN  
ASSOCIATION TO PLEAD  
BY A DATE CERTAIN AND  
AUTHORIZING THE UNITED  
STATES TO SERVE ORDER  
BY PUBLICATION**

Plaintiff United States of America (hereinafter "United States"), has filed a complaint in the United States District Court for the District of Utah in the above captioned matter to foreclose federal tax liens against David L. Beagley and Roberta A. Beagley upon real property located at 245 West 725 North, Lindon, Utah 84042 and is legally described as follows:

Commencing at a point South along the Section line 1644.62 feet and West 1385.32 feet from the East one quarter corner of Section 28, Township 5 South, Range 2 East, Salt Lake Base and Meridian; thence South 0° 48' 06" East 101.52 feet; thence South 89° 11' 54" West 197.00 feet; thence North 0° 48' 06" West 101.52 feet; thence North 89° 11' 54" East 197.00 feet to the point of beginning.

The United States has moved the Court for an Order permitting it to serve Deseret Federal Savings and Loan Association by publication and for an extension of time to complete service. Having considered the motion and pleadings filed herein, the Court hereby Orders as follows:

1. The Court shall, pursuant to Fed. R. Civ. P. 4(n)(1), assert jurisdiction over the real property and improvements thereon located at 245 West 725 North, Lindon, Utah 84042, and legally described above.


2. Pursuant to 28 U.S.C. § 1655 service upon defendant Deseret Federal Savings and Loan Association shall be effectuated by publication of a copy of this Order not less than once a week for six consecutive weeks in a regularly issued newspaper of general circulation in the judicial district of Utah.

3. Defendant Deseret Federal Savings and Loan Association shall appear or plead in this action no later than March 15, 2007. If there is no appearance or pleading by such date, the Court shall proceed as if the absent defendant had been served with process within the State of Utah, but any adjudication shall, as regards to the absent defendant without appearance, effect only the real property and improvements thereon located at 245 West 725 North, Lindon, Utah 84042.

4. The United States shall have ten weeks from the date of this order to effect service of process upon defendant Deseret Federal Savings and Loan Association.

Dated this 5 day of December, 2006.

BY THE COURT:

  
TENA CAMPBELL  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

FILED  
U.S. DISTRICT COURT

2006 DEC -4 P 2:16

DISTRICT OF UTAH

DIANE MONETA FRITZ,	)	BY: _____
	)	DEPUTY CLERK
Plaintiff,	)	Case No. 2:06-CV-657 TS
	)	
v.	)	District Judge Ted Stewart
	)	
STATE OF UTAH et al.	)	<b>O R D E R</b>
	)	
Defendants	)	

Plaintiff, Diane Moneta Fritz, filed a *pro se* prisoner civil rights complaint.<sup>1</sup> Because Plaintiff had at three or more prior times brought an action that was dismissed as "frivolous or malicious or fail[ing] to state a claim upon which relief may be granted,"<sup>2</sup> the Court concluded that Plaintiff could not proceed *in forma pauperis* without prepaying her entire filing fee. In its order dated October 20, 2006, the Court warned that Plaintiff's complaint would be dismissed unless she paid the full filing fee within thirty days. More than thirty days later, Plaintiff's filing fee remains unpaid.

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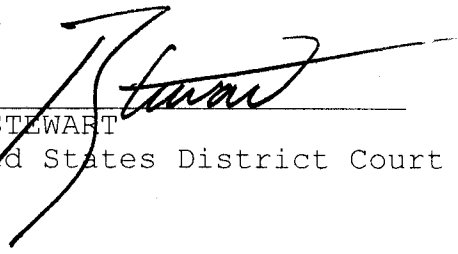
<sup>1</sup>See 42 U.S.C.S. § 1983 (2006).

<sup>2</sup>28 *id.* § 1915(g).

IT IS THEREFORE ORDERED that Plaintiff's complaint is dismissed.

DATED this 4<sup>th</sup> day of December, 2006.

BY THE COURT:

  
\_\_\_\_\_  
TED STEWART  
United States District Court



IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

RANDY THOMAS NAVES,	)	
	)	
Plaintiff,	)	Case No. 2:06-CV-658 DB
	)	
v.	)	District Judge Dee Benson
	)	
WIL CARLSON et al.,	)	<b>O R D E R</b>
	)	
Defendants.	)	Magistrate Judge David Nuffer

---

Plaintiff, Randy Thomas Naves, has filed a *pro se* prisoner civil rights complaint<sup>1</sup> and proceeds *in forma pauperis*. He now moves for appointed counsel and production of documents.

The Court first considers the two motions for appointed counsel. Plaintiff has no constitutional right to counsel.<sup>2</sup> However, the Court may in its discretion appoint counsel for indigent inmates.<sup>3</sup> "The burden is upon the applicant to convince the court that there is sufficient merit to his claim to warrant the appointment of counsel."<sup>4</sup>

When deciding whether to appoint counsel, the district court should consider a variety of factors, "including 'the merits of the litigant's claims, the nature of the factual issues raised in

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<sup>1</sup>See [42 U.S.C.S. § 1983 \(2006\)](#).

<sup>2</sup>See [Carper v. Deland](#), 54 F.3d 613, 616 (10th Cir. 1995); [Bee v. Utah State Prison](#), 823 F.2d 397, 399 (10th Cir. 1987).

<sup>3</sup>See [28 U.S.C.S. § 1915\(e\)\(1\) \(2006\)](#); [Carper](#), 54 F.3d at 617; [Williams v. Meese](#), 926 F.2d 994, 996 (10th Cir. 1991).

<sup>4</sup>[McCarthy v. Weinberg](#), 753 F.2d 836, 838 (10th Cir. 1985).

the claims, the litigant's ability to present his claims, and the complexity of the legal issues raised by the claims.'"<sup>5</sup>

Considering the above factors, the Court concludes here that (1) it is not clear at this point that Plaintiff has asserted a colorable claim; (2) the issues in this case are not complex; and (3) Plaintiff is not incapacitated or unable to adequately function in pursuing this matter. Thus, the Court denies for now Plaintiff's motion for appointed counsel.

The Court next denies Plaintiff's motion for production of documents. Because Plaintiff's complaint has not yet been fully screened or served upon Defendants, this motion is premature.

IT IS HEREBY ORDERED that:

(1) Plaintiff's requests for appointed counsel are denied (see File Entry #s 4 & 11); however, if, after the case is screened, it appears that counsel may be needed or of specific help, the Court will ask an attorney to appear pro bono on Plaintiff's behalf.


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<sup>5</sup>[Rucks v. Boergermann, 57 F.3d 978, 979 \(10th Cir. 1995\)](#) (quoting *Williams*, 926 F.2d at 996); accord [McCarthy, 753 F.2d at 838-39](#).

(2) Plaintiff's motion for discovery is denied as premature.  
(See File Entry # 5.) Should the complaint survive screening,  
this request may be renewed.

DATED this 6th day of December, 2006.

BY THE COURT:

  
\_\_\_\_\_  
DAVID NUFFER  
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
Central Division for the District of Utah

---

Les Goodwin, Mary Lou Goodwin,

**Plaintiff,**

**vs.**

Hole 4, Prudential Real Estate,

**Defendant.**

**SCHEDULING ORDER AND  
ORDER VACATING HEARING**

**Case No. 2:06CV679PGC**

**District Judge Paul G. Cassell**

**Magistrate Judge**

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Pursuant to Fed. R. Civ. P. 16(b), the Magistrate Judge<sup>1</sup> received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

**IT IS ORDERED** that the Initial Pretrial Hearing set for 12/13/06, at 2:30 pm is **VACATED**.

**\*\*ALL TIMES 4:30 PM UNLESS INDICATED\*\***

- |           |   |                      |
|-----------|---|----------------------|
| <b>1.</b> | <b>PRELIMINARY MATTERS</b>  | <b><u>DATE</u></b>   |
|           | Nature of claim(s) and any affirmative defenses:  |                      |
|           | a. Was Rule 26(f)(1) Conference held?   | <u>11/10/06</u>      |
|           | b. Has Attorney Planning Meeting Form been submitted?                                       | <u>12/1/06</u>       |
|           | c. Was 26(a)(1) initial disclosure completed?   | <u>12/8/06</u>       |
| <b>2.</b> | <b>DISCOVERY LIMITATIONS</b>  | <b><u>NUMBER</u></b> |
|           | a. Maximum Number of Depositions by Plaintiff(s)  | <u>10</u>            |
|           | b. Maximum Number of Depositions by Defendant(s)  | <u>10</u>            |
|           | c. Maximum Number of Hours for Each Deposition<br>(unless extended by agreement of parties) | <u>7</u>             |
|           | d. Maximum Interrogatories by any Party to any Party  | <u>25</u>            |
|           | e. Maximum requests for admissions by any Party to any Party                                | <u>25</u>            |

f. Maximum requests for production by any Party to any Party

DATE

3. AMENDMENT OF PLEADINGS/ADDING PARTIES<sup>2</sup>

a. Last Day to File Motion to Amend Pleadings 8/27/07

b. Last Day to File Motion to Add Parties 2/26/07

4. RULE 26(a)(2) REPORTS FROM EXPERTS<sup>3</sup>

a. Plaintiff 9/24/07

b. Defendant 9/24/07

c. Counter Reports 10/24/07

5. OTHER DEADLINES

a. Discovery to be completed by:

Fact discovery 8/24/07

Expert discovery 11/24/07

b. *(optional)* Final date for supplementation of disclosures and discovery under Rule 26 (e)

c. Deadline for filing dispositive or potentially dispositive motions 11/24/07

6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION

a. Referral to Court-Annexed Mediation

b. Referral to Court-Annexed Arbitration

c. Evaluate case for Settlement/ADR on 3/14/07

d. Settlement probability:

7. TRIAL AND PREPARATION FOR TRIAL:

a. Rule 26(a)(3) Pretrial Disclosures<sup>4</sup>

Plaintiffs 3/3/08

Defendants 3/17/08

b. Objections to Rule 26(a)(3) Disclosures  
(if different than 14 days provided in Rule)

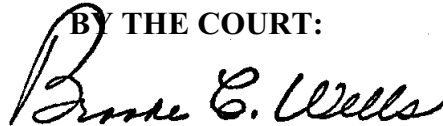
			<u>DATE</u>
c.	Special Attorney Conference <sup>5</sup> on or before		3/31/08
d.	Settlement Conference <sup>6</sup> on or before		
e.	Final Pretrial Conference	3:00 pm	4/14/08
f.	Trial	<u>Length</u>	<u>Time</u> <u>Date</u>
	i. Bench Trial		
	ii. Jury Trial	<u>3</u>	<u>8:00 am</u> <u>4/28/08</u>

**8. OTHER MATTERS:**

**Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.**

**Dated this 5 day of December, 2006.**

**BY THE COURT:**



**Brooke C. Wells  
U.S. Magistrate Judge**

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).
2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).
3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.
4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.
5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special

equipment or courtroom arrangement requirements will be included in the pre-trial order.

6. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

S:\IPT\2006\Goodwin v Hole 4 2 06 CV 679 PGC alp.wpd

FILED  
U.S. DISTRICT COURT

2006 DEC -6 A 11 **RECEIVED**

Denver C. Snuffer, Jr. (3032)

Bret W. Reich (9542)

**NELSON, SNUFFER, DAHLE & POULSEN, P.C.**

10885 South State Street

Sandy, UT 84070

Telephone: (801) 576-1400

Facsimile: (801) 576-1960

DISTRICT OF UTAH DEC 9 2006

BY: DEPUTY CLERK OFFICE OF  
JUDGE TENA CAMPBELL

Attorneys for Plaintiff

---

IN THE UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF UTAH

---

Riddle & Associates, P.C.,

Plaintiff,

v.

Nathaniel Barrett,

Defendant.

**ORDER GRANTING  
VOLUNTARY DISMISSAL WITH  
PREJUDICE**

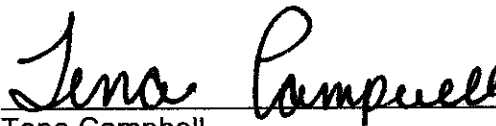
Civil No. 2:06-CV-00687 TC

Judge Tena Campbell

---

Based upon Plaintiff's Motion to voluntarily dismiss the lawsuit, the Court hereby grants the motion and dismisses the lawsuit with prejudice. Each party to bear their own costs and attorney's fees.

DATED this 5<sup>th</sup> day of December, 2006.



Tena Campbell

United States District Court Judge






CAME ON TO BE HEARD Plaintiffs and Defendants, World Wide Association of Specialty Programs and Schools, Ken Kay, Karr Farnsworth, Robert Lichfield, Teen Help, Cross Creek Manor, L.L.C., Cross Creek Center for Boys, L.L.C., and Teen Help's Agreed Motion to Set Uniform Response Date to Defendants' currently filed Motions to Dismiss, Sever and Motion for More Definite Statement.

IT IS ORDERED that Plaintiffs' Uniform Response Date is **12/18/2006** for all of Defendant's currently filed Motions to Dismiss, Sever and Motion For A More Definite Statement.

SIGNED on this 6th day of December, 2006.

---



U.S. DISTRICT JUDGE

---

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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THE ESTATE OF TODD ALATALO, JULIE  
ALATALO, an Individual,

Plaintiffs,

v.

STANDARD INSURANCE COMPANY, a  
company doing business within the State of  
Utah, and DOES 1-10,

Defendants.

ORDER GRANTING IN PART AND  
DENYING IN PART STIPULATED  
MOTION TO DISMISS WITH PREJUDICE

Case No. 2:06-cv-00718

Before the court is the parties' stipulated motion to dismiss the above-captioned case with prejudice (#16). The court GRANTS in part and DENIES in part the motion to dismiss (#16).

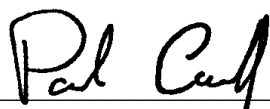
This case is dismissed with prejudice, each party to bear his, hers, or its own costs, expenses, and attorney fees. If a dispute arises regarding the settlement, the court will resolve it in the conventional manner.

The Clerk's Office is directed to close this case.

SO ORDERED.

DATED this 6th day of December, 2006.

BY THE COURT:

  
\_\_\_\_\_

Paul G. Cassell  
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
Central Division for the District of Utah

---

Lamont Pace,

**Plaintiff,**

**vs.**

Edo Western Corporation,

**Defendant.**

**SCHEDULING ORDER AND  
ORDER VACATING HEARING**

**Case No. 2:06CV728PGC**

**District Judge Paul G. Cassell**

**Magistrate Judge**

---

Pursuant to Fed. R. Civ. P. 16(b), the Magistrate Judge<sup>1</sup> received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

**IT IS ORDERED** that the Initial Pretrial Hearing set for 12/13/06, at 2:30 pm is **VACATED**.

**\*\*ALL TIMES 4:30 PM UNLESS INDICATED\*\***

- |           |   |                      |
|-----------|---|----------------------|
| <b>1.</b> | <b>PRELIMINARY MATTERS</b>  | <b><u>DATE</u></b>   |
|           | Nature of claim(s) and any affirmative defenses:  |                      |
|           | a. Was Rule 26(f)(1) Conference held?   | <u>11/1/06</u>       |
|           | b. Has Attorney Planning Meeting Form been submitted?                                       | <u>Yes</u>           |
|           | c. Was 26(a)(1) initial disclosure completed?   | <u>12/8/06</u>       |
| <br>      |   |                      |
| <b>2.</b> | <b>DISCOVERY LIMITATIONS</b>  | <b><u>NUMBER</u></b> |
|           | a. Maximum Number of Depositions by Plaintiff(s)  | <u>10</u>            |
|           | b. Maximum Number of Depositions by Defendant(s)  | <u>10</u>            |
|           | c. Maximum Number of Hours for Each Deposition<br>(unless extended by agreement of parties) | <u>7</u>             |
|           | d. Maximum Interrogatories by any Party to any Party  | <u>25</u>            |
|           | e. Maximum requests for admissions by any Party to any Party                                | <u>25</u>            |

- f. Maximum requests for production by any Party to any Party 35  
DATE
3. AMENDMENT OF PLEADINGS/ADDING PARTIES<sup>2</sup>
- a. Last Day to File Motion to Amend Pleadings 1/31/07
- b. Last Day to File Motion to Add Parties 1/31/07
4. RULE 26(a)(2) REPORTS FROM EXPERTS<sup>3</sup>
- a. Plaintiff 6/30/07
- b. Defendant 7/15/07
- c. Counter Reports 7/31/07
5. OTHER DEADLINES
- a. Discovery to be completed by:
- Fact discovery 5/31/07
- Expert discovery 8/7/07
- b. *(optional)* Final date for supplementation of disclosures and discovery under Rule 26 (e) 5/31/07
- c. Deadline for filing dispositive or potentially dispositive motions 8/15/07
6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION
- a. Referral to Court-Annexed Mediation n
- b. Referral to Court-Annexed Arbitration n
- c. Evaluate case for Settlement/ADR on 5/31/07
- d. Settlement probability:
7. TRIAL AND PREPARATION FOR TRIAL:
- a. Rule 26(a)(3) Pretrial Disclosures<sup>4</sup>
- Plaintiffs **12/5/07**
- Defendants **12/19/07**
- b. Objections to Rule 26(a)(3) Disclosures  
(if different than 14 days provided in Rule)

			<u>DATE</u>
c.	Special Attorney Conference <sup>5</sup> on or before		1/2/08
d.	Settlement Conference <sup>6</sup> on or before		
e.	Final Pretrial Conference	3:00 PM	1/15/08
f.	Trial	<u>Length</u>	<u>Time</u> <u>Date</u>
	i. Bench Trial		
	ii. Jury Trial	<u>3</u>	<u>8:00 AM</u> <u>1/28/08</u>

**8. OTHER MATTERS:**

**Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.**

**Dated this 5 day of December, 2006.**

**BY THE COURT:**  


---

**Brooke C. Wells  
U.S. Magistrate Judge**

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).

2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special

equipment or courtroom arrangement requirements will be included in the pre-trial order.

6. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

S:\IPT\2006\Pace v Edo Western 2 06 CV 728 PGC alp.wpd



FILED  
U.S. DISTRICT COURT

2006 DEC -6 P 12: 59

---

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

DISTRICT OF UTAH  
BY: DEPUTY CLERK

JONATHAN H. HORNE M.D., as  
Trustee for Jonathan H. Horne, M.D.,  
P.C. Retirement Plan Trust Fund,

Plaintiffs,

vs.

VAL E. SOUTHWICK, et al.,

Defendants.

NOTICE OF RECUSAL

Case No. 2:06 CV 742 TC

---

I recuse myself in this case, and ask that the appropriate assignment card equalization be drawn by the clerk's office.

DATED this 6<sup>th</sup> day of December, 2006.

BY THE COURT:

*Tena Campbell*

TENA CAMPBELL  
United States District Judge

---

Judge Ted Stewart  
DECK TYPE: Civil  
DATE STAMP: 12/06/2006 @ 13:00:45  
CASE NUMBER: 2:06CV00742 TS

Order Prepared & Submitted by:

Leslie J. Randolph (5009)  
David E. Smoot (5347)  
SMOOT LAW LLC  
Chapter 7 Trustee  
136 South Main Street, Suite 423  
Salt Lake City, Utah 84101  
Telephone: (801) 359-1777

FILED  
U.S. DISTRICT COURT

RECEIVED

DEC 05 2006

2006 DEC -6 A 10: 01:11 PM

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

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DEC 05 2006

OFFICE OF U.S. DISTRICT JUDGE  
BRUCE S. JENKINS

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION**

Academy Mortgage Corporation, a Utah  
Corporation,

Plaintiff,

vs.

Apex Lending, Inc., a Florida Corporation,  
Rolanda Wise, Daniel Radvansky and John  
Does 1-5,

Defendants.

Civil Action No. 2:06-CV-823 BSJ

Judge Bruce S. Jenkins

**ORDER CONTINUING HEARING**

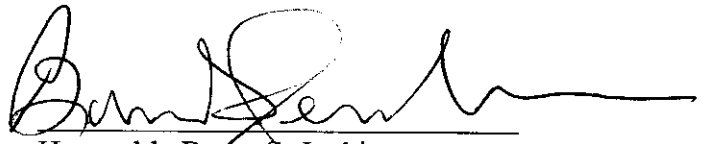
Based upon the Stipulation for Continuance of Hearing and for good cause appearing, it is  
hereby

ORDERED that the hearing on Defendants' Motion for to Transfer Venue and Motion  
to Dismiss, previously scheduled for November 8, 2006 at the hour of 10:30 a.m., is hereby

continued to **January 5, 2007** at the hour of <sup>1:30 p.m.</sup>~~9:00 a.m.~~

Dated: 12/5/06

BY THE COURT



Honorable Bruce S. Jenkins  
United States District Court Judge

**CLERK'S CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of the foregoing Order Continuing Hearing on the \_\_\_\_ day of December, 2006 upon the following:

Michael E. Huber  
Law Offices of Michael Huber, PC  
8170 South Highland Dr. Suite E5  
Salt Lake City, UT 84093

J. Steven Newton  
Business Law Associates, LC  
8170 South Highland Dr. Suite E5  
Salt Lake City, UT 84093

Leslie J. Randolph  
Smoot Law LLC  
136 South Main #423  
Salt Lake City, UT 84101

\_\_\_\_\_  
Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

RONALD MORELLO,	)	
	)	
Plaintiff,	)	Case No. 2:06-CV-848 PGC
	)	
v.	)	District Judge Paul Cassell
	)	
N.Y. STATE DIV. OF PROBATION &	)	
PAROLE,	)	<b>ORDER TO SHOW CAUSE</b>
	)	
Defendants.	)	Magistrate Judge Brooke Wells

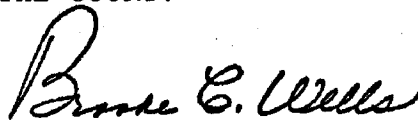
---

Plaintiff filed a *pro se* prisoner civil rights complaint<sup>1</sup> and proceeds *in forma pauperis*.<sup>2</sup> He has paid his initial partial filing fee, but has not met the Court's order to sign and file with the Court a form consenting to collection of the remaining balance of the filing fee in increments from his inmate account.

IT IS THEREFORE ORDERED that Plaintiff must within thirty days show cause why his case should not be dismissed. A new consent-to-collection form is attached so Plaintiff may cure his omission. He should sign the form, copy it, give the original to the inmate account office, then send the copy to the Court.

DATED this 4th day of December, 2006.

BY THE COURT:



BROOKE C. WELLS  
United States Magistrate Judge

---

<sup>1</sup>See 42 U.S.C.S. § 1983 (2006).

<sup>2</sup>See 28 *id.* § 1915.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

CONSENT TO COLLECTION OF FEES FROM INMATE TRUST ACCOUNT

I, Ronald Morello (Case No. 2:06-CV-848 PGC), understand that even when the Court grants my application to proceed *in forma pauperis* and files my complaint, I must still eventually pay the entire filing fee of \$350.00. I understand that I must pay the complete filing fee even if my complaint is dismissed.

I further consent for the appropriate institutional officials to collect from my account on a continuing basis each month, an amount equal to 20% of each month's income. Each time the amount in the account reaches \$10, the Trust Officer shall forward the interim payment to the Clerk's Office, U.S. District Court for the District of Utah, 350 South Main, #150, Salt Lake City, UT 84101, until such time as the \$350.00 filing fee is paid in full.

By executing this document, I also authorize collection on a continuing basis of any additional fees, costs, and sanctions imposed by the District Court.

---

Signature of Inmate  
Ronald Morello

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

JASON SCOTT TYLER,	)	
	)	
Plaintiff,	)	Case No. 2:06-CV-849 DAK
	)	
v.	)	District Judge Dale A. Kimball
	)	
SHERIFF KENNARD et al.,	)	<b>O R D E R</b>
	)	
Defendants.	)	

---

Plaintiff, Jason Scott Tyler, filed a *pro se* prisoner civil rights complaint.<sup>1</sup> The Court has already granted Plaintiff's request to proceed without prepaying the entire filing fee.

Even so, Plaintiff must eventually pay the full \$350.00 filing fee required.<sup>2</sup> Plaintiff must start by paying "an initial partial filing fee of 20 percent of the greater of . . . the average monthly deposits to [his inmate] account . . . or . . . the average monthly balance in [his inmate] account for the 6-month period immediately preceding the filing of the complaint."<sup>3</sup> Under this formula, Plaintiff must pay \$3.32. If this initial partial fee is not paid within thirty days, or if Plaintiff has not shown he has no means to pay the initial partial filing fee, the complaint will be dismissed.

Plaintiff must also complete the attached "Consent to

---

<sup>1</sup>See 42 U.S.C.S. § 1983 (2006).

<sup>2</sup>See 28 *id.* § 1915(b)(1).

<sup>3</sup>*Id.*

Collection of Fees" form and submit the original to the inmate funds accounting office and a copy to the Court within thirty days so the Court may collect the balance of the entire filing fee Plaintiff owes. Plaintiff is also notified that pursuant to Plaintiff's consent form submitted to this Court, Plaintiff's correctional facility will make monthly payments from Plaintiff's inmate account of twenty percent of the preceding month's income credited to Plaintiff's account.

IT IS THEREFORE ORDERED that:

(1) Although the Court has already granted Plaintiff's application to proceed *in forma pauperis*, Plaintiff must still eventually pay \$350.00, the full amount of the filing fee.

(2) Plaintiff must pay an initial partial filing fee of \$3.32 within thirty days of the date of this Order, or his complaint will be dismissed.

(3) Plaintiff must make monthly payments of twenty percent of the preceding month's income credited to Plaintiff's account.

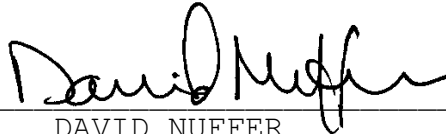
(4) Plaintiff shall make the necessary arrangement to give a copy of this Order to the inmate funds accounting office at Plaintiff's correctional facility.

(5) Plaintiff shall complete the consent to collection of fees and submit it to the inmate funds accounting office at

Plaintiff's correctional facility and also submit a copy of the signed consent to this Court within thirty days from the date of this Order, or the complaint will be dismissed.

DATED this 6th day of December, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "David Nuffer", is written over a horizontal line.

DAVID NUFFER  
United States Magistrate Judge



IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

CONSENT TO COLLECTION OF FEES FROM INMATE TRUST ACCOUNT

I, Jason Scott Tyler (Case No. 2:06-CV-849 DAK), understand that even though the Court has granted my application to proceed *in forma pauperis* and filed my complaint, I must still eventually pay the entire filing fee of \$350.00. I understand that I must pay the complete filing fee even if my complaint is dismissed.

I, Jason Scott Tyler, hereby consent for the appropriate institutional officials to withhold from my inmate account and pay to the court an initial payment of \$3.32, which is 20% of the greater of:

- (a) the average monthly deposits to my account for the six-month period immediately preceding the filing of my complaint or petition; or
- (b) the average monthly balance in my account for the six-month period immediately preceding the filing of my complaint or petition.

I further consent for the appropriate institutional officials to collect from my account on a continuing basis each month, an amount equal to 20% of each month's income. Each time the amount in the account reaches \$10, the Trust Officer shall forward the interim payment to the Clerk's Office, U.S. District Court for the District of Utah, 350 South Main, #150, Salt Lake City, UT 84101, until such time as the \$350.00 filing fee is paid in full.

By executing this document, I also authorize collection on a continuing basis of any additional fees, costs, and sanctions imposed by the District Court.

---

Signature of Inmate  
Jason Scott Tyler

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

JOHN L. LEGG JR.,	)	
	)	
Plaintiff,	)	Case No. 2:06-CV-868 DAK
	)	
v.	)	District Judge Dale Kimball
	)	
DEP'T OF CORRS. et al.,	)	<b>ORDER TO SHOW CAUSE</b>
	)	
Defendants.	)	

---

Plaintiff, inmate John L. Legg Jr., raises a variety of claims in his civil rights complaint.<sup>1</sup> His allegations mainly stem from an incident in which he was transported by the Utah Department of Corrections (UDC) to his sentencing in Tooele County. While at the sentencing, he asserts Tooele County Sheriff's deputies used excessive force on him, injuring his shoulder, arm, and back. Aside from the sheriff's office and deputies, Plaintiff names as defendants the UDC transport officers, UDC supervisors, several medical personnel whom he states inadequately treated his injuries, and Mike Kelly, who, on March 13, 2006, found Plaintiff guilty of a disciplinary charge and imposed punishment upon Plaintiff.

Other allegations not linked to defendants involve the inaccuracy of Plaintiff's presentencing report; an unnamed nurse who checked Plaintiff's soft-tissue injury but not his back or spine; an incident in September 2005, in which prison staff

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<sup>1</sup>See [42 U.S.C.A. § 1983 \(2006\)](#).

retaliated against Plaintiff by, while he was recovering from shoulder surgery, handcuffing and shackling him to the floor of a holding cell, causing him a fall in which he could have re-injured his shoulder; an incident on September 4, 2005, in which Plaintiff was not given his morning and afternoon pain medication; an incident on September 19, 2005, in which Plaintiff had to explain to his doctor that he could not follow post-operation instructions because of handcuffing and shackles; and various retaliatory actions, such as "disciplinarys," "shakedowns," property damage, and denial of notary and other services necessary to bringing lawsuits.

Plaintiff properly documents his assertion that he has exhausted all his prison grievances as to his allegations about the March 2006 disciplinary hearing; the lack of help in Tooele given him by DOC transport officers; the incorrect information given by Defendant Coombs in March 2006 to an outside orthopedist about Plaintiff's condition and physical therapy; Defendant Stone's May 2005 inadequate examination of Plaintiff through the cuffport; Defendant Abbott's failure in May 2005 to examine Plaintiff, despite complaints of shoulder and back pain; and Defendant Armstrong's failure to provide adequate physical therapy. However, he neither describes nor documents any attempts to grieve any other claims or any other of the defendants' actions.

To pursue his case, Plaintiff must have already totally exhausted all his claims through every prison grievance level.<sup>2</sup> Section 1997e(a) prescribes a pleading prerequisite for prisoners.<sup>3</sup> Consequently, a complaint that does not properly allege the exhaustion of administrative remedies "'is tantamount to one that fails to state a claim upon which relief may be granted.'"<sup>4</sup> A prisoner plaintiff must

(1) plead his claims with "a short and plain statement . . . showing that [he] is entitled to relief," in compliance with Fed. R. Civ. P. 8(a)(2), and (2) "attach[] a copy of the applicable administrative dispositions to the complaint, or, in the absence of written documentation, describe with specificity the administrative proceeding and its outcome."<sup>5</sup>

Absent "'particularized averments concerning exhaustion showing the nature of the administrative proceeding and its outcome, the action must be dismissed under § 1997e.'"<sup>6</sup>

Further, the Tenth Circuit reads § 1997e(a) as a "total exhaustion" rule, meaning that "'when multiple prison condition claims have been joined . . . § 1997e(a) requires that all

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<sup>2</sup>See *id.* § 1997e(a) ("No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal Law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.").

<sup>3</sup>See [Steele v. Fed. Bureau of Prisons, 355 F.3d 1204, 1210 \(10th Cir. 2003\)](#).

<sup>4</sup>*Id.* (quoting [Rivera v. Allin, 144 F.3d 719, 731 \(11th Cir. 1998\)](#)).

<sup>5</sup>*Id.* (alterations in original) (quoting [Knuckles El v. Toombs, 215 F.3d 640, 642 \(6th Cir. 2000\)](#)).

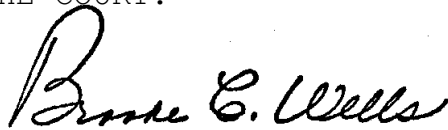
<sup>6</sup>*Id.* at 1211 (quoting [Knuckles El, 215 F.3d at 642](#)).

available prison grievance remedies must be exhausted as to all of the claims.'"<sup>7</sup> Though Plaintiff may have fully grieved several of his claims, he has not met the pleading requirement of specifically detailing all three levels of grievances and responses as to his many other claims. "[T]he presence of unexhausted claims in [Plaintiff's] complaint require[s this C]ourt to dismiss his action in its entirety without prejudice."<sup>8</sup>

IT IS THEREFORE ORDERED that within thirty days Plaintiff must show cause why his complaint should not be dismissed for failure to adequately plead that he exhausted many of his claims.

DATED this 6th day of December, 2006.

BY THE COURT:

A handwritten signature in black ink, reading "Brooke C. Wells". The signature is written in a cursive, flowing style. The first name "Brooke" is written with a large, looped 'B'. The last name "Wells" is written with a large, looped 'W'.

---

BROOKE C. WELLS  
United States Magistrate Judge

---

<sup>7</sup>[Ross v. County of Bernalillo, 365 F.3d 1181, 1188-89 \(10th Cir. 2004\)](#)  
(quoting *Graves v. Norris*, 218 F.3d 884, 885 (8th Cir. 2000)).

<sup>8</sup>*Id.* at 1189.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
Central Division for the District of Utah

---

Shannon Chapman,

**Plaintiff,**

**vs.**

Carmike Cinemas,

**Defendant.**

**SCHEDULING ORDER AND  
ORDER VACATING HEARING**

**Case No. 2:06CV948TS**

**District Judge Ted Stewart**

**Magistrate Judge David Nuffer**

---

Pursuant to Fed. R. Civ. P. 16(b), the Magistrate Judge<sup>1</sup> received the Attorneys' Planning Report filed by counsel. The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

**IT IS ORDERED** that the Initial Pretrial Hearing set for 2/22/07, at 9:00 am is **VACATED**.

**\*\*ALL TIMES 4:30 PM UNLESS INDICATED\*\***

- |           |   |                      |
|-----------|---|----------------------|
| <b>1.</b> | <b>PRELIMINARY MATTERS</b>  | <b><u>DATE</u></b>   |
|           | Nature of claim(s) and any affirmative defenses:  |                      |
|           | a. Was Rule 26(f)(1) Conference held?   | <u>11/29/06</u>      |
|           | b. Has Attorney Planning Meeting Form been submitted?                                       | <u>11/30/06</u>      |
|           | c. Was 26(a)(1) initial disclosure completed?   | <u>12/15/06</u>      |
| <br>      |   |                      |
| <b>2.</b> | <b>DISCOVERY LIMITATIONS</b>  | <b><u>NUMBER</u></b> |
|           | a. Maximum Number of Depositions by Plaintiff(s)  | <u>10</u>            |
|           | b. Maximum Number of Depositions by Defendant(s)  | <u>10</u>            |
|           | c. Maximum Number of Hours for Each Deposition<br>(unless extended by agreement of parties) | <u>7</u>             |
|           | d. Maximum Interrogatories by any Party to any Party  | <u>25</u>            |
|           | e. Maximum requests for admissions by any Party to any Party                                |                      |

f. Maximum requests for production by any Party to any Party

DATE

3. AMENDMENT OF PLEADINGS/ADDING PARTIES<sup>2</sup>

a. Last Day to File Motion to Amend Pleadings 3/16/07

b. Last Day to File Motion to Add Parties 3/16/07

4. RULE 26(a)(2) REPORTS FROM EXPERTS<sup>3</sup>

a. Plaintiff 7/2/07

b. Defendant 8/1/07

c. Counter Reports 8/31/07

5. OTHER DEADLINES

a. Discovery to be completed by:

Fact discovery 7/2/07

Expert discovery 10/1/07

b. *(optional)* Final date for supplementation of disclosures and discovery under Rule 26 (e)

c. Deadline for filing dispositive or potentially dispositive motions 10/31/07

6. SETTLEMENT/ ALTERNATIVE DISPUTE RESOLUTION

a. Referral to Court-Annexed Mediation

b. Referral to Court-Annexed Arbitration

c. Evaluate case for Settlement/ADR on

d. Settlement probability:

7. TRIAL AND PREPARATION FOR TRIAL:

a. Rule 26(a)(3) Pretrial Disclosures<sup>4</sup>

Plaintiffs 2/4/08

Defendants 2/18/08

b. Objections to Rule 26(a)(3) Disclosures  
(if different than 14 days provided in Rule)

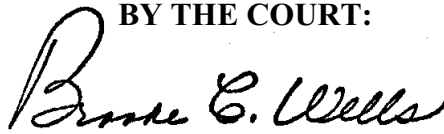
			<u>DATE</u>
c.	Special Attorney Conference <sup>5</sup> on or before		3/3/08
d.	Settlement Conference <sup>6</sup> on or before		
e.	Final Pretrial Conference	2:30 pm	3/17/08
f.	Trial	<u>Length</u>	<u>Time</u> <u>Date</u>
	i. Bench Trial		
	ii. Jury Trial	<u>3</u>	<u>8:30 am</u> <u>3/31/08</u>

**8. OTHER MATTERS:**

**Counsel should contact chambers staff of the District Judge regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.**

**Dated this 5 day of December, 2006.**

**BY THE COURT:**



**Brooke C. Wells  
U.S. Magistrate Judge**

1. The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately referred to that Magistrate Judge. A separate order may refer this case to a Magistrate Judge under DUCivR 72-2 (b) and 28 USC 636 (b)(1)(A) or DUCivR 72-2 (c) and 28 USC 636 (b)(1)(B). The name of any Magistrate Judge to whom the matter is referred under DUCivR 72-2 (b) or (c) should appear on the caption as required under DUCivR10-1(a).
2. Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).
3. A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.
4. Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.
5. The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special



equipment or courtroom arrangement requirements will be included in the pre-trial order.

6. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

S:\IPT\2006\Chapman v Carmike Cinemas 2 06 CV 948 TS alp.wpd

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH - CENTRAL DIVISION

**FILED**  
U.S. DISTRICT COURT  
2006 DEC -5 P 2:20

DARRELL G. HAFEN,

Plaintiffs,

vs.

KEVIN CARTER, et. al.,

Defendants.

DISTRICT OF UTAH

BY: DEPUTY CLERK

**ORDER OF REFERENCE**

Case No. 2:06CV989

Judge Dee V. Benson

IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(A) and the rules of this Court, the above entitled case is referred to Magistrate Judge Paul Warner. The magistrate judge is directed to hear and determine any nondispositive pretrial matters pending before the Court.

DATED this 5<sup>th</sup> day of December, 2006.

BY THE COURT:



DEE BENSON  
United States District Judge

In the United States District Court  
for the District of Utah, Central Division

FILED  
U.S. DISTRICT COURT  
2006 DEC -6 A 10: 06

RANDALL IVERSON,

Plaintiff,

vs.

PFIZER, INC.,

Defendant.

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

ORDER OF RECUSAL

Case No. 2:06 CV 1000

I recuse myself in this case, and ask that the appropriate assignment card  
equalization be drawn by the clerk's office.

DATED this 5 day of December, 2006.

  
J. THOMAS GREENE  
UNITED STATES DISTRICT JUDGE

Judge Tena Campbell  
DECK TYPE: Civil  
DATE STAMP: 12/06/2006 @ 11:49:06  
CASE NUMBER: 2:06CV01000 TC

Report and Order Terminating Probation  
Prior to Original Expiration Date

UNITED STATES DISTRICT COURT

2006 DEC -6 A 9 58

for the

DISTRICT OF UTAH

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK


UNITED STATES OF AMERICA

v. Criminal No. 2:97-CR-00386-001-<sup>TS</sup>~~DKW~~

ROBERT A. MILLER

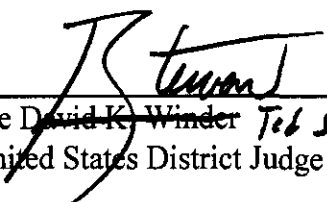
On November 30, 2004, the above-named was placed on supervised release for a period of 55 months. The defendant has complied with the rules and regulations of supervision and is no longer in need of supervision. It is accordingly recommended that the defendant be discharged from supervision.

Respectfully submitted,

  
Richard G. Law  
United States Probation Officer

Pursuant to the above report, it is ordered that the defendant be discharged from supervision and that the proceedings in the case be terminated.

Dated this 6<sup>th</sup> day of December, 2006.

  
Honorable David K. Winder <sup>Ted Stewart</sup>  
Senior United States District Judge

United States Probation Office  
for the District of Utah

RECEIVED CLERK

DEC - 1 2006

U.S. DISTRICT COURT

**Request for Early Termination of Supervision**

Name of Offender: **Robert A. Miller**

Docket Number: **2:97-CR-00386-001-<sup>TS</sup>DKW**

Name of Sentencing Judicial Officer: **Honorable David K. Winder**  
**Senior United States District Judge**

Date of Original Sentence: **February 5, 1999**

Original Offense: **Mail Fraud; False Statement to a Financial Institution**

Original Sentence: **16 Months BOP Custody/60 Months Supervised Release**

Type of Supervision: **Supervised Release**

Supervision Began: **June 1, 2000**

Supervision Revoked: **November 23, 2004**

Supervision Began: **November 30, 2004**

---


**SUPERVISION SUMMARY**

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At this time, the probation office is requesting early termination of supervision. The defendant's scheduled expiration date is June 29, 2009. He has consistently paid \$500 per month towards his restitution balance of \$321,193.78. He has entered into an agreement with the Financial Litigation Unit to continue making \$500 per month payments following his termination from supervision until the balance of the restitution is satisfied. He has maintained monthly contact, successfully submitted to random drug testing and completed mental health treatment. Assistant United States Attorney Scott Thorley does not oppose the recommendation for early termination of supervision. If the Court concurs, a Form 35 is attached for signature.

If the Court desires more information or another course of action, please contact me at 535-4252.

I declare under penalty of perjury that the foregoing is true and correct

  
\_\_\_\_\_  
Richard G. Law  
United States Probation Officer  
November 21, 2006

Attachment